

## ARTICLES

### Community Economic Development as Progressive Politics: Toward a Grassroots Movement for Economic Justice

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*Community economic development (CED) emerged during the 1990s as the dominant approach to redressing urban poverty, replacing entitlement programs and civil rights initiatives with a market-based strategy for promoting economic equality. Premised on the idea that poor neighborhoods are underutilized markets in need of private sector investment, market-based CED gained a broad range of ideological adherents, resonating with proponents of black nationalism, neoliberal economics, and postmodern micropolitics. As the decade brought economic issues to the fore and legal services advocates faced mounting federal restrictions, increasing numbers of poverty lawyers adopted the market-based CED model, providing transactional legal assistance to community organizations engaged in neighborhood revitalization initiatives. Yet, despite the expansion of the market paradigm, analysts have largely avoided a critical dialogue about CED theory and have neglected a careful examination of the evolving nature of grassroots CED practice. This Article sets forth an indigenous critique of market-based CED, arguing that it fails to deliver on its promise of poverty alleviation, diverts attention from the need for a coordinated political response to economic disadvantage, privileges localism over structural reform, and impedes the formation of multiracial political alliances. This Article then presents an alternative model of politically engaged CED that integrates legal advocacy and community organizing to build cross-neighborhood coalitions that promote broad-based economic reform. It concludes by outlining the contours of this new approach, highlighting how poverty lawyers are collaborating with organizing groups to expand living wage ordinances, establish cooperative businesses, and implement comprehensive hiring and job training programs.*

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## INTRODUCTION

During the unprecedented surge of 1990s prosperity, community economic development (CED) emerged as the dominant approach to poverty alleviation, touted by politicians as a market-based alternative to outdated welfare policies and championed by civil rights leaders as a critical link to economic equality.<sup>1</sup> At a

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1. In a prominent example of the shift in antipoverty policies toward CED, the Clinton Administration unveiled its New Markets Initiative in 1999, pledging over one billion dollars in tax breaks and loan assistance to businesses in poor communities. See Charles Babington, *Clinton Urges Corporate Investment to Fight Pockets of Poverty*, WASH. POST, July 6, 1999, at A2; David Barstow, *Invest in Poor Areas, Clinton Urges*, N.Y. TIMES, Jan. 14, 2000, at

time of dizzying wealth accumulation, declining welfare rolls, and burgeoning budget surpluses, a consensus formed around the idea that market-based CED programs were necessary to revitalize the lingering pockets of poverty that blotted an otherwise vibrant economic landscape. Espoused by advocates of different ideological stripes,<sup>2</sup> the simple logic of market-based CED—that increasing for-profit initiatives in geographically discrete low-income neighborhoods could produce economic transformation<sup>3</sup> and community empowerment<sup>4</sup>—became an antipoverty axiom.

Over the past decade, the ascendance of market-based CED has fundamentally shaped the development of social policy, community-based practice, and legal

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B4; John M. Broder, *A Pledge of Federal Help for the Economic Byways*, N.Y. TIMES, July 6, 1999, at A10; John M. Broder, *Clinton, in Poverty Tour, Focuses on Profits*, N.Y. TIMES, July 7, 1999, at A14; Peter T. Kilborn, *Clinton, amid the Despair on a Reservation, Again Pledges Help*, N.Y. TIMES, July 8, 1999, at A16; Todd S. Purdum, *Clinton Ends Visit to Poor with an Appeal for Support*, N.Y. TIMES, July 9, 1999, at A10. Civil rights leaders have also embraced CED. For example, in 1999, Jesse Jackson's Rainbow/PUSH Coalition initiated a "Wall Street Project" to increase investment in minority-owned communities. See George Packer, *Trickle-Down Civil Rights*, N.Y. TIMES, Dec. 12, 1999, § 6 (Magazine), at 75.

2. See Daniel S. Shah, *Lawyering for Empowerment: Community Development and Social Change*, 6 CLINICAL L. REV. 217, 218 (1999) ("As an approach to dealing with urban poverty, community development programs have been supported under diverse political agendas."); see also Nicholas Lemann, *The Myth of Community Development*, N.Y. TIMES, Jan. 9, 1994, § 6 (Magazine), at 27 (arguing that CED as an antipoverty program appeals broadly to politicians, philanthropic foundations, business groups, community-based organizations, and government bureaucrats); David E. Sanger, *Fighting Poverty, President and Speaker Find a Moment of Unity*, N.Y. TIMES, Nov. 6, 1999, at A10 (describing an agreement between President Bill Clinton and Speaker Dennis Hastert to "merge their plans to alleviate inner-city and rural poverty" through tax incentives, wage credits, and other tools). Indeed, different variations of market-based strategies to alleviate poverty have been embraced by divergent figures. See, e.g., Steven A. Holmes, *Kemp's Legacy as Housing Secretary: One of Ideas, Not Accomplishments*, N.Y. TIMES, Aug. 20, 1996, at A15 (noting that Republican Jack Kemp was one of the first federal advocates of enterprise zones); Roberto Mangabeira Unger & Cornel West, *First Principles: Progressive Politics and What Lies Ahead*, NATION, Nov. 23, 1998, at 11, 13 (proposing the establishment of "independently administered venture-capital funds chartered to invest in the rearguard and to conserve and grow the resources with which they would be endowed").

3. See, e.g., James H. Carr, *Community, Capital and Markets: A New Paradigm for Community Reinvestment*, NEIGHBORWORKS J., Summer 1999, at 20, 23 (arguing that the market-based approach to community revitalization "could lead to overcoming one of the most intractable problems of this century and set the stage for vibrant and reinvigorated communities in the next millennium"); Michael E. Porter, *The Competitive Advantage of the Inner City*, HARV. BUS. REV., May-June 1995, at 55-56 ("A sustainable economic base can be created in the inner city, but only as it has been created elsewhere: through private, for-profit initiatives and investment based on economic self-interest and genuine competitive advantage . . ."); see also RENEE A. BERGER & CAROL STEINBACH, NATIONAL CONGRESS FOR COMMUNITY ECONOMIC DEVELOPMENT, A PLACE IN THE MARKETPLACE: MAKING CAPITALISM WORK IN POOR COMMUNITIES (1992).

4. See, e.g., Patricia A. Wilson, *Empowerment: Community Economic Development from the Inside Out*, 33 URB. STUD. 617 (1996).

advocacy.<sup>5</sup> At the national policy level, a private sector approach has defined the federal government's response to poverty issues, as support programs have yielded to market-based antipoverty initiatives, such as the Empowerment Zone Program and the New Markets Tax Credit. This federal agenda has been augmented by state and local efforts to adopt market-based programs to stimulate investment and business activity in low-income neighborhoods.<sup>6</sup>

Against this policy backdrop, CED professionals working to implement revitalization programs on the ground have also embraced a private sector model, reconfiguring low-income communities as underutilized markets with rich economic opportunities for businesses.<sup>7</sup> According to this model, effective CED involves identifying the competitive advantages of conducting business in inner city areas<sup>8</sup> and structuring the proper incentives to lure reluctant enterprises into neglected markets.<sup>9</sup> Advocates of this approach have therefore suggested that distressed communities revalue and promote indigenous assets such as public transportation and proximity to existing commercial centers.<sup>10</sup>

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5. These components of market-based CED have evolved in an interconnected manner, as federal, state, and local policies have created the framework for local interventions by community activists and poverty lawyers.

6. For example, California has established Enterprise Zones to promote private investment and job creation in low-income neighborhoods. See CAL. GOV'T CODE §§ 7070-7086 (2001) ("It is declared to be the purpose of this chapter to stimulate business and industrial growth in the depressed areas of the state by relaxing regulatory controls that impede private investment."). At the local level, municipal governments have focused their redevelopment programs on subsidizing business expansion in blighted areas. See, e.g., ROBERT POLLIN & STEPHANIE LUCE, *THE LIVING WAGE: BUILDING A FAIR ECONOMY* 56-61 (1998) (describing municipal urban development policies).

7. See *REBUILDING LA'S URBAN COMMUNITIES: A FINAL REPORT FROM RLA 58* (1997) ("RLA's industry research dispelled the myth that Los Angeles' neglected communities are barren wastelands. Instead, these communities have a large and growing manufacturing base and substantial unserved retail demand. . . . [T]hey also have assets that provide opportunity for growth and establishment of new business, including strategic location, infrastructure support, and a skilled local workforce."); Carr, *supra* note 3, at 20 (stating that "many lower-income and minority communities that face a severe shortage of capital are, nevertheless, rich and undervalued assets"); Audrey G. McFarlane, *Race, Space, and Place: The Geography of Economic Development*, 36 *SAN DIEGO L. REV.* 295, 306 (1999) ("[T]he attitude toward community is reconfigured to recognize the assets in the community and to make a concerted effort to harness, promote, and enhance these assets through an array of complementary programs and activities . . ."); John P. Kretzmann, *Building Communities from the Inside Out*, 83 *SHELTERFORCE ONLINE*, Sept.-Oct. 1995 (discussing the components of a community "Assets Map," which includes individual residents, citizen associations, and community institutions), at <http://www.nhi.org/online/issues/83/buildcomm.html>; see also JOHN P. KRETZMANN & JOHN L. MCKNIGHT, *BUILDING COMMUNITIES FROM THE INSIDE OUT: A PATH TOWARD FINDING AND MOBILIZING A COMMUNITY'S ASSETS* (1993).

8. See Porter, *supra* note 3, at 56 (advocating an approach to economic development that seeks to "identify and exploit the competitive advantages of inner cities that will translate into truly profitable businesses").

9. See Carr, *supra* note 3, at 21-22.

10. *Id.* at 20 (stating that low-income neighborhoods should promote their "historic

Once these assets are identified and properly packaged for outside investors,<sup>11</sup> private sector capital can be channeled to poor neighborhoods through innovative financial tools,<sup>12</sup> bringing with it stable jobs and needed services.<sup>13</sup>

In response to this privatization of social policy and community action, poverty lawyers have increasingly incorporated market techniques into their antipoverty arsenals, altering the terrain of legal services delivery. In an effort to improve the physical infrastructure and strengthen the economic fabric of distressed communities, practitioners have provided transactional legal assistance in the areas of real estate, tax, and corporate law to community-based organizations engaged in neighborhood revitalization initiatives.<sup>14</sup> CED legal programs have created jobs

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sites, vintage housing stock, convenience to mass transit systems, well-established religious institutions, traditional commercial thoroughfares, and . . . proximity to major employers, cultural or recreation facilities, restaurants, boutiques, colleges and universities, parks and other city landmarks"); see also FANNIE MAE FOUNDATION, *Introduction to Valuing Community Assets*, in THE MARKET POWER OF EMERGING COMMUNITIES: A NEW PARADIGM TO PLAN, PROMOTE, AND FINANCE NEIGHBORHOOD DEVELOPMENT (2000) [hereinafter THE MARKET POWER OF EMERGING COMMUNITIES].

11. See Carr, *supra* note 3, at 20-21; see also Robert E. Lang, James W. Hughes & Karen A. Danielsen, *Targeting the Suburban Urbanites: Marketing Central-City Housing*, 8 HOUSING POL'Y DEBATE 437 (1997); Catherine Toups & James H. Carr, *Reimagining Distressed Communities: A Strategy to Reverse Decline and Attract Investors*, 1 BUILDINGBLOCKS 3 (2000).

12. See FANNIE MAE FOUNDATION, *Financial Innovations and Tools Overview*, in THE MARKET POWER OF EMERGING COMMUNITIES, *supra* note 10, at 1-10 ("Financial Tools" Tab); see also FANNIE MAE FOUNDATION, *Examples of Innovative Financial Tools for Community Development*, in THE MARKET POWER OF EMERGING COMMUNITIES, *supra* note 10, at 1-21 (promoting the use of innovative community development financing strategies such as real estate investment trusts, microfinance, and community development trusts).

13. In addition, CED professionals have claimed that, through the use of value recapture schemes, the material benefits generated through this market strategy can be transferred to low-income neighborhood residents. See FANNIE MAE FOUNDATION, *Value Recapture Mechanisms*, in THE MARKET POWER OF EMERGING COMMUNITIES, *supra* note 10, at 1 (stating that "[c]ommunity 'change agents' at work in revitalizing communities can set up mechanisms that channel some of the increased real estate revenues toward uses that help mitigate the negative effects of gentrification and ensure that newly created wealth is used to the advantage of current low- and moderate-income residents").

14. For discussions of CED in the poverty law context, see generally NATIONAL ECONOMIC DEVELOPMENT AND LAW CENTER, COUNSELING ORGANIZATIONS IN COMMUNITY ECONOMIC DEVELOPMENT (1996); Susan D. Bennett, *On Long-Haul Lawyering*, 25 FORDHAM URB. L.J. 771, 784-85 (1998); Michael Diamond, *Community Lawyering: Revisiting the Old Neighborhood*, 32 COLUM. HUM. RTS. L. REV. 67 (2000); Brian Glick & Matthew J. Rossman, *Neighborhood Legal Services as House Counsel to Community-Based Efforts to Achieve Economic Justice: The East Brooklyn Experience*, 23 N.Y.U. REV. L. & SOC. CHANGE 105 (1997); Jeffrey S. Lehman & Rochelle E. Lento, *Law School Support for Community-Based Economic Development in Low-Income Urban Neighborhoods*, 42 J. URB. & CONTEMP. L. 65 (1992); Maribeth Perry, *The Role of Transactional Attorneys in Providing Pro Bono Legal Services*, 42 B.B.J. 16 (1998); Peter Pitegoff, *Law School Initiatives in Housing and Community Development*, 4 PUB. INT. L.J. 275 (1995); Ben Quinones, *CED on the Job*, 27 CLEARINGHOUSE REV. 773 (1993); Ben Quinones, *Redevelopment Redefined*:

for the poor through microenterprise and commercial development,<sup>15</sup> increased the stock of affordable housing units through tax credit syndication,<sup>16</sup> and expanded access to capital through the development of community-based financial institutions.<sup>17</sup> As a measure of its appeal, CED legal practice has attracted financial support from government agencies and private foundations,<sup>18</sup> resulting in the development of a significant number of CED legal services programs.<sup>19</sup>

However, the current consensus in favor of market-based CED obscures deep historical divisions about the appropriate relationship between market

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*Revitalizing the Central City with Resident Control*, 27 U. MICH. J.L. REF. 689 (1994) [hereinafter Quinones, *Redevelopment Redefined*]; Michael H. Schill, *Assessing the Role of Community Development Corporations in Inner City Economic Development*, 22 N.Y.U. REV. L. & SOC. CHANGE 753 (1996-97); Janine Sisak, *If the Shoe Doesn't Fit . . . Reformulating Rebellious Lawyering to Encompass Community Group Representation*, 25 FORDHAM URB. L.J. 873 (1998); Ann Southworth, *Business Planning for the Destitute? Lawyers as Facilitators in Civil Rights and Poverty Practice*, 1996 WIS. L. REV. 1121 (1996); Lucie E. White, *Feminist Microenterprise: Vindicating the Rights of Women in the New Global Order?*, 50 ME. L. REV. 327 (1998).

15. For discussions of microenterprise development, see generally SUSAN R. JONES, A LEGAL GUIDE TO MICROENTERPRISE DEVELOPMENT: BATTLING POVERTY THROUGH SELF-EMPLOYMENT (1998) [hereinafter JONES, A LEGAL GUIDE TO MICROENTERPRISE DEVELOPMENT]; Brad Caftel, *Helping Microenterprise Programs Succeed*, CED EXCHANGE, June 1993, at 1; Margaret Beebe Held, *Developing Microbusinesses in Public Housing: Notes from the Field*, 31 HARV. C.R.-C.L. L. REV. 473 (1996); Susan R. Jones, *Self-Employment: Possibilities and Problems*, in HARD LABOR: WOMEN AND WORK IN THE POST-WELFARE ERA 76 (Joel F. Handler & Lucie E. White eds., 1999) [hereinafter HARD LABOR]; Susan R. Jones, *Small Business and Community Economic Development: Transactional Lawyering for Social Change and Economic Justice*, 4 CLINICAL L. REV. 195 (1997) [hereinafter Jones, *Small Business and Community Economic Development*]; Lewis D. Solomon, *Microenterprise: Human Reconstruction in America's Inner Cities*, 15 HARV. J.L. & PUB. POL'Y 191 (1992); Robert E. Suggs, *Bringing Small Business Development to Urban Neighborhoods*, 30 HARV. C.R.-C.L. L. REV. 487 (1995). For an analysis of commercial development projects, see Schill, *supra* note 14, at 766-72.

16. See, e.g., David Philip Cohen, *Improving the Supply of Affordable Housing: The Role of the Low-Income Housing Tax Credit*, 6 J.L. & POL'Y 537, 550 (1998).

17. See, e.g., Christopher Jordan Heisen, *Community Development Lite: An Economic Analysis of the Community Development Financial Institutions Act*, 39 HOW. L.J. 337, 343 (1995); Rochelle E. Lento, *Community Development Banking Strategy for Revitalizing Our Communities*, 27 U. MICH. J.L. REFORM 773 (1994).

18. In general, the Ford, Annie E. Casey, Charles Stuart Mott, and John S. and James L. Knight Foundations have been active in supporting CED efforts. Recently, Power of Attorney was established specifically to fund pro bono CED legal programs across the country. See Power of Attorney, *Power of Attorney*, at <http://www.powerofattorney.org> (last visited Jan. 12, 2002).

19. For example, in 1995, one study indicated that 20% of the more than 300 legal services programs across the country had devoted significant resources to CED. See Mario Salgado, *Building a Community Economic Development Unit*, 28 CLEARINGHOUSE REV. 981, 982 (1995). In addition, more than twenty CED clinics have been established in law schools across the country, including Harvard, Yale, Georgetown, Chicago, Michigan, George Washington, and State University of New York at Buffalo.

mechanisms and social change. In the United States, the roots of market-based CED can be traced to the rise of post-Reconstruction economic nationalism,<sup>20</sup> which focused on developing an independent African American economic base through the enhancement of job skills and the creation of black-owned businesses.<sup>21</sup> Proponents of this view sought to achieve economic gains for African Americans by emphasizing black market participation in conjunction with a strategy of political accommodation.<sup>22</sup>

Another version of antipoverty advocacy emerged from the civil rights struggle of the 1960s, one that, in contrast to the nationalist paradigm, attempted to use grassroots mobilization and political action to redress poverty. Groups such as the National Welfare Rights Organization (NWRO) and the Association of Community Organizations for Reform Now (ACORN) drew upon the rich tradition of civil rights protest to develop an alternative to market-based CED that relied on community organizing to redistribute resources to economically disadvantaged communities.<sup>23</sup> Instead of promoting business expansion in distressed neighborhoods, their approach focused on enlisting the political power of community-based coalitions of residents, labor union members, clergy, and other activists to challenge economic inequality and corporate dominance.<sup>24</sup> This movement marked a break with previous antipoverty efforts—signaling a shift from localized market strategies for economic development to broad-based political action for economic justice—and planted the seeds for an alternative vision of CED.

However, the momentum behind a large-scale movement for economic justice quickly dissipated. The conservative revival of the 1980s and the

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20. See HAROLD CRUSE, *THE CRISIS OF THE NEGRO INTELLECTUAL* 19, 175-76 (1967).

21. See Lateef Mtima, *African-American Economic Empowerment Strategies for the New Millennium—Revisiting the Washington-DuBois Dialectic*, 42 HOW. L.J. 391, 394-99 (1999); see also Booker T. Washington, *The Atlanta Exposition Address*, in *THE NEGRO AMERICAN: A DOCUMENTARY HISTORY* 343 (Leslie H. Fishel, Jr. & Benjamin Quarles eds., 1967).

22. See Mtima, *supra* note 21, at 396.

23. For a discussion of these organizations, see HARRY C. BOYTE, *THE BACKYARD REVOLUTION: UNDERSTANDING THE NEW CITIZEN MOVEMENT* 53, 93-97 (1980); GARY DELGADO, *ORGANIZING THE MOVEMENT: THE ROOTS AND GROWTH OF ACORN* (1986); NICK KOTZ & MARY LYNN KOTZ, *A PASSION FOR EQUALITY: GEORGE A. WILEY AND THE MOVEMENT* (1977); FRANCES FOX PIVEN & RICHARD A. CLOWARD, *POOR PEOPLE'S MOVEMENTS: WHY THEY SUCCEED, HOW THEY FAIL* 264-359 (1977); Steve Bachmann, *Bachmann & Weltchek: ACORN Law Practice*, 7 LAW & POL'Y 29 (1985); DAN RUSSELL, *ROOTS OF A SOCIAL JUSTICE MOVEMENT (1970-75)*, at <http://www.acorn.org/history-content.html> (last visited Jan. 7, 2002).

24. See Harry C. Boyte, *Community Organizing in the 1970s: Seeds of Democratic Revolt*, in *COMMUNITY ORGANIZATION FOR URBAN SOCIAL CHANGE: A HISTORICAL PERSPECTIVE* 217, 230 (Robert Fisher & Peter Romanofsky eds., 1981) (stating that “the 1970s produced far greater attention to the creation of alliances among groups of the powerless—alliances made increasingly possible by the parallel changes within labor unions, churches, public-interest groups, and other reform constituencies”).

neoliberal policies of the 1990s ushered in a pro-business political consensus<sup>25</sup> that resulted in welfare reform,<sup>26</sup> attacks on affirmative action,<sup>27</sup> and cutbacks in traditional antipoverty programs.<sup>28</sup> This political shift placed economic justice activists in a defensive posture and elevated the importance of market-based reform strategies. During the same period, progressive scholars mounted a postmodern critique of conventional politics and traditional poverty law advocacy that de-emphasized large-scale social movements and privileged localized micropolitical struggle.<sup>29</sup> By the close of the 1990s, the changing political and intellectual environment had eroded economic justice activism. Market-based CED, which appealed both to conservative proponents of free

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25. Thomas Frank has defined this consensus as the new "market populism":

Today . . . American opinion leaders seem generally convinced that democracy and the free market are simply identical . . . . What is "new" is this idea's triumph over all its rivals; the determination of American leaders to extend it to all the world; the general belief among opinion-makers that there is something natural, something divine, something inherently democratic about markets. A better term for the "New Economy" might simply be "consensus."

THOMAS FRANK, ONE MARKET UNDER GOD: EXTREME CAPITALISM, MARKET POPULISM, AND THE END OF ECONOMIC DEMOCRACY 15 (2000).

26. See Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), Pub. L. No. 104-193, 110 Stat. 2129, 2137 (codified as amended in scattered sections of 42 U.S.C.); see also Robert Pear, *The Welfare Bill: The Overview; Clinton to Sign Welfare Bill that Ends U.S. Aid Guarantee and Gives States Broad Power*, N.Y. TIMES, Aug. 1, 1996, at A1 (describing the welfare reform provisions eliminating the guarantee of cash assistance to poor children, giving states authority to run their own welfare to work programs, establishing a five-year lifetime limit for welfare payments, and instituting strict work requirements).

27. See Kim Forde-Mazrui, *The Constitutional Implications of Race-Neutral Affirmative Action*, 88 GEO. L.J. 2331, 2332 (2000) (describing legal and political challenges to affirmative action programs).

28. Federally funded legal services programs, in particular, came under attack. See DOUGLAS J. BESHAROV, INTRODUCTION TO LEGAL SERVICES FOR THE POOR: TIME FOR REFORM xxiii (Douglas J. Besharov ed., 1990) (stating that the Legal Services Corporation (LSC) budget was cut by a quarter during the Reagan Administration); *Legal Services Survives, Barely*, N.Y. TIMES, May 6, 1996, at A14 (noting that, in 1996, Congress succeeded in cutting LSC funding by 30% and placing restrictions on the type of work legal aid lawyers could conduct); Greg Winter, *Legal Firms Cutting Back on Free Services for Poor*, N.Y. TIMES, Aug. 17, 2000, at A1 (stating that, in 1990, as many of the nation's biggest law firms cut back sharply on pro bono work, there were also cuts in government-sponsored legal aid programs); see also Linda Greenhouse, *\$100 Million in Legal Services Funding Is Placed in Doubt by a Supreme Court Ruling*, N.Y. TIMES, June 16, 1998, at A18 (describing a Supreme Court ruling threatening the use of Interest on Lawyers Trust Accounts funds to support legal services programs).

29. See Joel F. Handler, *The Presidential Address, 1992: Postmodernism, Protest, and the New Social Movements*, 26 L. & SOC'Y REV. 697 (1992); see also William H. Simon, *The Dark Secret of Progressive Lawyering: A Comment on Poverty Law Scholarship in the Post-Modern, Post-Reagan Era*, 48 U. MIAMI L. REV. 1099, 1111-14 (1994) (arguing that there has been a "strong influence from some notable post-modern theorists" on the development of poverty law scholarship).



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market politics and progressive advocates of local empowerment, emerged at the forefront of social change efforts.

Yet even as the 1990s brought a period of market exuberance, economic justice activism continued to percolate, growing stronger by the decade's end. Spurred by the intransigence of poverty in the New Economy,<sup>30</sup> a core of progressive scholars and advocates have become increasingly critical of the apolitical, free market approach to CED.<sup>31</sup> In particular, they have questioned the efficacy of business development strategies that fail to address larger economic and political forces,<sup>32</sup> highlighting the role of market-based CED in

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30. See PAUL MORE, PATRICE WAGONHURST, JESSICA GOODHEART, DAVID RUNSTEN, ENRICO MARCELLI, PASCALE JOASSART-MARCELLI & JOHN MEDEARIS, LOS ANGELES ALLIANCE FOR A NEW ECONOMY, *THE OTHER LOS ANGELES: THE WORKING POOR IN THE CITY OF THE 21ST CENTURY* (2000) (finding that, despite the economic recovery during the 1990s, the percentage of the population in Los Angeles that was poor rose from 36% to 43%); see also Mark Arax, Mary Curtius & Soraya Sarhaddi Nelson, *California Income Gap Grows amid Prosperity*, L.A. TIMES, Jan. 9, 2000, at A1 (citing a study by the California Policy Institute finding that the state's poorest working families bring home 22% less in real dollars than they did in 1969); Babington, *supra* note 1, at A2 (noting that unemployment rates in some parts of Appalachia were at least one and one-half times the national average); Nina Bernstein, *Poverty Found to be Rising in Families Considered Safe*, N.Y. TIMES, Apr. 20, 2000, at B1 (citing analysis of census data that showed that the overall rate of poverty in New York City among families with children was 32.3%); Kilborn, *supra* note 1, at A16 (stating that, according to tribe leaders, unemployment on some Native American reservations was as high as 85%); Jim Newton, *L.A.'s Growing Pay Gap Looms as Political Issue*, L.A. TIMES, Sept. 7, 1999, A1 (stating that one out of every three Los Angeles County children live below the official poverty line—\$16,450 a year for a family of four); Purdum, *supra* note 1, at A10 (citing an unemployment rate of three times the national average in Watts, California); Richard W. Stevenson, *Fed Says Economy Increased Net Worth of Most Families*, N.Y. TIMES, Jan. 17, 2000, A1 (citing Federal Reserve report that showed declining net worth among the poor); Richard W. Stevenson, *In a Time of Plenty, The Poor Are Still Poor*, N.Y. TIMES, Jan. 23, 2000, § 4 (Week in Review), at 3 (noting that the 1998 poverty rate was 12.7%, worse than in 1969, and that income inequality had increased significantly over the past thirty years); Don Terry, *U.S. Child Poverty Rate Fell as Economy Grew, but Is Above 1979 Level*, N.Y. TIMES, Aug. 11, 2000, at A10 (stating that the national child poverty rate has risen from 16.2% in 1979 to 18.7% in 1998); Louis Uchitelle, *Devising New Math to Define Poverty*, N.Y. TIMES, Oct. 18, 1999, at A1 (describing new Census Bureau formula for computing the poverty threshold that would place 17% of the population below the poverty line); Louis Uchitelle, *Rising Incomes Lift 1.1 Million Out of Poverty*, N.Y. TIMES, Oct. 1, 1999, at A20 (citing Census Bureau study finding that, despite an overall increase in median household income over the past decade, income inequality has remained virtually unchanged); Mary Williams Walsh, *'New Economy' Deepens the Wealth Divide*, L.A. TIMES, Apr. 19, 2000, at A1 (noting increased inequality in the New Economy).

31. See Randy Stoecker, *The Community Development Corporation Model of Urban Redevelopment: A Political Economy Critique and an Alternative*, 19 J. URB. AFF. 1, 3 (1997); see also Benjamin Marquez, *Mexican-American Community Development Corporations and the Limits of Directed Capitalism*, 7 ECON. DEV. Q. 287 (1993).

32. See, e.g., Kenneth A. Galdston, *Organizing for Power and Democratic Economic Development in the InterValley Project* (1995) (unpublished manuscript on file with author); see also John Anner, *New Visions for the Future*, THIRD FORCE, Mar.-Apr. 1997, (special insert, *Dollars and Direct Action*), at 4.

facilitating the public financing of low-wage, dead-end jobs.<sup>33</sup> These critiques have influenced CED legal scholars, who have recently focused on the deficiencies of CED's traditional commitment to business development and local revitalization.<sup>34</sup> At the grassroots level, CED lawyers, in conjunction with their organizing counterparts, have begun to change the contours of CED advocacy by applying new techniques honed in reaction to the market approach.

Drawing upon this body of critical scholarship and oppositional practice, this Article outlines a new model of CED, one that reconnects CED to its politically activist roots and promotes economic justice over market expansion. It argues that poverty lawyers must move away from the current emphasis on injecting capital into geographically discrete, racially homogenous communities, and instead embrace a politically engaged conception of CED that leverages the strength of multiracial coalitions to create greater equity for vulnerable workers. Under this new approach, CED is reconceptualized as a progressive political strategy that fuses legal advocacy and grassroots organizing to achieve broad-based economic reform. This model of CED is not a rejection of current practice; to the contrary, it retains a commitment to the central goal of market-based CED—better economic opportunities for the poor—while continuing to utilize the transactional skills familiar to CED practitioners. Furthermore, under this approach, market-based techniques are not abandoned; rather, they are subordinated to the dictates of a broader vision

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33. See PAUL MORE, JESSICA GOODHEART, MELANIE MEYERS, DAVID RUNSTEN & RACHEL STOLIER, UCLA CENTER FOR LABOR RESEARCH AND EDUCATION, SCHOOL OF PUBLIC POLICY AND SOCIAL RESEARCH & LOS ANGELES ALLIANCE FOR A NEW ECONOMY, WHO BENEFITS FROM REDEVELOPMENT IN LOS ANGELES?: AN EVALUATION OF COMMERCIAL REDEVELOPMENT ACTIVITIES IN THE 1990S v-vi (1999). Analysts have also focused greater attention on the failure of publicly subsidized CED efforts to meet job creation goals. See Lee Romney, *L.A. Community Bank Actions Criticized*, L.A. TIMES, Feb. 3, 1999, at A1 (noting that the Los Angeles Community Development Bank, despite making \$47 million in business loans, had created only 132 jobs for the residents of poor urban areas, well below the number required by federal officials); James Sterngold, *A Grand Idea That Went Badly Awry*, N.Y. TIMES, Nov. 14, 1999, § 3 (Money & Business), at 1 (describing the federally-funded \$435 million Los Angeles Community Development Bank as a "crushing disappointment"); see also Ted Rohrlich, *Riordan's Job Creation Claim Called Exaggerated*, L.A. TIMES, Nov. 15, 1999, at B1 (citing study indicating that the Los Angeles mayor's business team helped create significantly fewer jobs than it had claimed).

34. See Louise A. Howells, *The Dimensions of Microenterprise: A Critical Look at Microenterprise as a Tool to Alleviate Poverty*, 9 J. AFFORDABLE HOUSING & COMMUNITY DEV. L. 161 (2000) (critiquing the reliance on microenterprise development as a strategy to redress poverty among the welfare-dependent population); McFarlane, *supra* note 7, at 299 (citing criticism of "development's exclusively localized view, which focuses on the specific problems of the targeted poor or disadvantaged community rather than seeing these problems in the context of a totality"); Shah, *supra* note 2, at 220-21 (arguing that CED lawyering ties community groups to complex legal structures that reinforce market subordination and reorient community goals).

of economic justice.

Part I of this Article traces the historical development of CED as an antipoverty strategy and analyzes the theoretical foundations of market-based CED. Part II offers a critique of market-based CED, arguing that it inadequately addresses poverty, privileges market expansion over political reform, de-emphasizes the need for broad structural change, and impedes the formation of cross-racial alliances. Part III sets forth an agenda for reclaiming CED as progressive political action, highlighting how innovative practitioners are forging a new paradigm of CED by deploying transactional lawyering to support living wage campaigns, worker ownership drives, and organizing-based jobs initiatives.

I. ECONOMIC NATIONALISM, GRASSROOTS ORGANIZING, AND MARKET  
ACCOMMODATION: THE EVOLUTION OF COMMUNITY ECONOMIC  
DEVELOPMENT

The history of progressive politics in the United States has reflected the dynamic tension between market-oriented and politically activist approaches to ameliorating poverty. Thus, the debate over the effectiveness of different types of CED strategies is deeply rooted in the history of indigenous movements by non-elite communities struggling to attain political, social, and economic parity. One of the dominant themes that emerge from a historical analysis of these movements is the recurrent effort to define the appropriate strategic relation between market reform and movement politics.

The standard history of CED has omitted a discussion of this broader context. Instead, conventional analyses of the evolution of CED have begun with the redevelopment and community action programs implemented in the 1950s and 1960s. By focusing on the programmatic development of CED, such discussions hide alternative visions of CED embedded in the historical record. Further, conventional critiques of CED premised on this narrow account tend to fault the implementation of CED programs, which, it is argued, has excluded community input and undermined local control.<sup>35</sup> In contrast, this Part offers a broad overview of CED that situates it within a framework of social struggle. On the basis of this historical analysis, this Part suggests that the evolution of CED is not simply a story of increasing bureaucratic centralization and diminishing local control. Instead, the central dynamic in the history of CED has been the entrenchment of the market-based approach.

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35. See, e.g., Quinones, *Redevelopment Redefined*, *supra* note 14; Shah, *supra* note 2.

A. *Origins: From Market Integration to Grassroots Action*1. *Market-based economic nationalism.*

Although there were a number of earlier government-sponsored and community-based efforts aimed at promoting economic development in black neighborhoods,<sup>36</sup> CED has its roots in the classic dialogue between Booker T. Washington and W.E.B. DuBois over the proper course to achieve economic empowerment and political enfranchisement for the newly emancipated slaves.<sup>37</sup> In the early 1900s, Washington, the influential founder of the Tuskegee Institute, espoused an economic nationalist position that implored blacks to seek economic self-sufficiency and de-emphasized the struggle for civil rights and social equality.<sup>38</sup> An apostle of the values of thrift, industry, and property ownership, Washington argued that black advancement would most readily come through an economic program of industrial training and

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36. See HARRY EDWARD BERNDT, *NEW RULERS IN THE GHETTO: THE COMMUNITY DEVELOPMENT CORPORATION AND URBAN POVERTY* 17-20 (1977) (describing post-emancipation programs, such as the establishment of all-black communities and the creation of the federal Freedman's Bureau, designed to spur economic development in black communities).

37. See Mtima, *supra* note 21 (analyzing the economic development approaches of Booker T. Washington and W.E.B. DuBois and assessing their implications for contemporary economic empowerment strategies).

38. See CRUSE, *supra* note 20, at 175 (stating that "[a]s far back as 1900, Booker T. Washington counseled the Negro to seek economic self-sufficiency"); LOUIS R. HARLAN, *Booker T. Washington and the National Negro Business League*, in BOOKER T. WASHINGTON IN PERSPECTIVE: ESSAYS OF LOUIS R. HARLAN 98, 105 (Raymond W. Smock ed., 1988):

Through a thousand speeches extolling the business career for blacks and promoting the Business League, Washington seemed to say that blacks should turn away from the avenues of political action and civil rights agitation which, for the time being anyhow, were already blocked, and travel up the economic road to affluence and consequent economic strength.

*Id.*; Washington, *supra* note 21, at 343 (imploing blacks to "'[c]ast down your buckets where you are' . . . in agriculture, mechanics, in commerce, in domestic service, and in the professions").

Our greatest danger is that in the great leap from slavery to freedom we may overlook the fact that the masses of us are to live by the productions of our hands, and fail to keep in mind that we shall prosper in proportion as we learn to dignify and glorify common labour and put brains and skill into the common occupations of life . . . .

*Id.* For a discussion of the life and philosophy of Washington, see generally BOOKER T. WASHINGTON AND HIS CRITICS: THE PROBLEM OF NEGRO LEADERSHIP (Hugh Hawkins ed., 1962); LOUIS R. HARLAN, *BOOKER T. WASHINGTON: THE MAKING OF A BLACK LEADER 1856-1901* (1972); SAMUEL R. SPENSER, *BOOKER T. WASHINGTON AND THE NEGRO'S PLACE IN AMERICAN LIFE* (1985). For a compendium of Washington's thought, see BOOKER T. WASHINGTON, *THE FUTURE OF THE AMERICAN NEGRO* (1907); BOOKER T. WASHINGTON, *THE NEGRO IN BUSINESS* (4th ed. 1907); BOOKER T. WASHINGTON, *THE STORY OF THE NEGRO: THE RISE OF THE RACE FROM SLAVERY* (1909); BOOKER T. WASHINGTON, *UP FROM SLAVERY: AN AUTOBIOGRAPHY* (1901).

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entrepreneurial business development<sup>39</sup> together with a political program of pragmatic accommodation to the existing social and legal order.<sup>40</sup> At Tuskegee, Washington implemented a rigorous curriculum of vocational training in the skilled trades, which, he believed, would facilitate black wealth accumulation. In an effort to foster black entrepreneurial activity, Washington established and presided over the National Negro Business League, which promoted black enterprise through the development of black business networks, the organization of “buy black” campaigns, and the provision of counseling and other aid to black small business owners.<sup>41</sup> Washington’s overriding programmatic goal was to build a viable black economic infrastructure on which to ground demands for political and civil rights.<sup>42</sup>

Although DuBois rejected Washington’s politically acquiescent strategy,<sup>43</sup> and came to be most prominently identified with his idea of cultivating a “Talented Tenth” of college-trained black leaders to direct the fight for racial equality,<sup>44</sup> there were striking similarities between the two with regard to their views on the importance of black entrepreneurship and economic independence. In fact, at an early stage, DuBois adopted a pro-business development position similar to Washington’s, advocating for the expansion of black business leagues and criticizing the shortage of black business owners and black-controlled economic institutions.<sup>45</sup> In his later years, DuBois returned to this conception of black economic development, emphasizing the importance of establishing black communities in America and proposing the organization of vast black-owned cooperative enterprises.<sup>46</sup> Thus, although it is Washington who is widely remembered as the progenitor of economic nationalism as a market-centered strategy of black uplift, both he and DuBois shared similar ideological assumptions about the importance of black business expansion.

The concept of economic nationalism continued to shape subsequent civil rights activism.<sup>47</sup> For instance, in the 1920s, Marcus Garvey gained national

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39. See BERNDT, *supra* note 36, at 20-22.

40. See Mtima, *supra* note 21, at 395-96.

41. See HARLAN, *supra* note 38, at 99-102.

42. See *id.* at 105.

43. See, e.g., CRUSE, *supra* note 20, at 175.

44. See W.E.B. DuBois, *The Talented Tenth*, in THE NEGRO PROBLEM: A SERIES OF ARTICLES BY REPRESENTATIVE AMERICAN NEGROES OF TO-DAY (1903), reprinted in THE NEGRO AMERICAN: A DOCUMENTARY HISTORY, *supra* note 21, at 367-68.

45. See HARLAN, *supra* note 38, at 99 (noting that it was DuBois who first disseminated the idea of a black business league, and that, at the time of the inception of the National Negro Business League in 1900, Washington was widely accused of having stolen DuBois’ concept).

46. See CRUSE, *supra* note 20, at 333; see also Herb Boyd, *DuBois and Black Economic Development*, CRISIS, Feb. 1992, at 19.

47. The idea of economic nationalism has been linked to other concepts related to the

attention as the leader of the Universal Negro Improvement Association (UNIA), which, in addition to advocating that blacks migrate “back to Africa,” promoted black independence from white market control through the expansion of black-owned businesses and the establishment of UNIA cooperatives.<sup>48</sup> Since that time, black business ownership has been a central tenet of such diverse groups as the Nation of Islam<sup>49</sup> and the Urban League.<sup>50</sup> Activists and

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economic and political struggles of African Americans. For instance, “black capitalism,” which focused on providing assistance to individual minority entrepreneurs and bolstering business development, became prominent in the late 1960s. See NATIONAL ECONOMIC DEVELOPMENT AND LAW CENTER, A LAWYER’S MANUAL ON COMMUNITY-BASED ECONOMIC DEVELOPMENT 5-8 (1974) [hereinafter NEDLC, A LAWYER’S MANUAL]; WILLIAM PETERMAN, NEIGHBORHOOD PLANNING AND COMMUNITY-BASED DEVELOPMENT: THE POTENTIAL AND LIMITS OF GRASSROOTS ACTION 49 (2000). In addition, the effort to achieve economic autonomy within black communities was a component of a broader political ideology of racial liberation that has been described as “black nationalism.” See, e.g., Gary Peller, *Frontier of Legal Thought III: Race Consciousness*, 1990 DUKE L.J. 758 (1990) (analyzing the evolution of black nationalism as a philosophical and practical defense of race consciousness and a critique of liberal integrationist ideology); see also ROBERT L. ALLEN, A GUIDE TO BLACK POWER IN AMERICA: AN HISTORICAL ANALYSIS (1970); BLACK NATIONALISM IN AMERICA (John Bracey, Jr., August Meier & Elliott Rudwick eds., 1970); RODNEY CARLISLE, THE ROOTS OF BLACK NATIONALISM (1975); CRUSE, *supra* note 20; HAROLD CRUSE, REBELLION OR REVOLUTION? (1968); THEODORE DRAPER, THE REDISCOVERY OF BLACK NATIONALISM (1970); WILSON JEREMIAH MOSES, THE GOLDEN AGE OF BLACK NATIONALISM 1850-1925 (1978); ALPHONSO PINKNEY, RED, BLACK AND GREEN: BLACK NATIONALISM IN THE UNITED STATES (1976).

48. See BERNDT, *supra* note 36, at 24-25 (discussing Black Star Steamship Line, Negro Factories Corporation, and other UNIA-sponsored business ventures); Peller, *supra* note 47, at 784 n.46. For a discussion of Garvey’s broader influence on the struggle for black equality, see EDMUND CRONON, BLACK MOSES: THE STORY OF MARCUS GARVEY AND THE UNIVERSAL NEGRO IMPROVEMENT ASSOCIATION (1955); AMY J. GARVEY, GARVEY AND GARVEYISM (1970); THE MARCUS GARVEY AND UNIVERSAL NEGRO IMPROVEMENT ASSOCIATION PAPERS (Robert A. Hill ed., 1983); TONY MARTIN, RACE FIRST: THE IDEOLOGICAL AND ORGANIZATIONAL STRUGGLES OF MARCUS GARVEY AND THE NEGRO IMPROVEMENT ASSOCIATION (1976); PHILOSOPHY AND OPINIONS OF MARCUS GARVEY (Amy J. Garvey ed., 1968); THEODORE G. VINCENT, BLACK POWER AND THE GARVEY MOVEMENT (1971).

49. See, e.g., MANNING MARABLE, BLACK LEADERSHIP xii (1998) (describing Louis Farrakhan, of the Nation of Islam, as a philosophical disciple of Washington, in the sense that both “preached the doctrine of black self-help, relying on resources found within black communities for group development” and that both “were convinced that African American entrepreneurship and property ownership held the keys to black economic advancement”); Francis X. Clines, *A Day for Families and Farrakhan in a Capital Gathering*, N.Y. TIMES, Oct. 17, 2000, at A20 (noting that Farrakhan proposed to “create an ‘economic development bank’ primed by \$100 contributions from families across the nation”).

50. See NATIONAL URBAN LEAGUE, RESOURCES & PROGRAMS, ECONOMIC SELF SUFFICIENCY (stating that one of the National Urban League’s goals is to help adults “attain economic self-sufficiency through . . . entrepreneurship”), at <http://www.nul.org/economic.html> (last visited Jan. 7, 2002). A strain of the nationalist, market-oriented economic development approach has also figured prominently in efforts by other marginalized communities to aggregate community-based capital assets, invest in community-controlled institutions, and promote local business ownership. For example, the Native American

scholars continue to espouse variations of the economic nationalist position,<sup>51</sup> while public policy decisions regarding economic development are still based on nationalist assumptions about the importance of building viable market structures within geographically discrete, racially homogeneous localities.<sup>52</sup>

## 2. *The roots of modern CED.*

The civil rights era marked a critical juncture in the development of CED. While economic nationalism remained an important component of the civil rights struggle, the 1960s also highlighted the power of mass-based direct action movements and grassroots mobilization to achieve political enfranchisement and legal equality.<sup>53</sup> The antipoverty efforts that emerged from this period reflected the programmatic duality of civil rights activism, embracing localized economic and large-scale political strategies to redress inequality.

Despite its significant successes, by the mid-1960s, many within the civil rights movement became dissatisfied with its emphasis on mainstream integrationist strategies that benefited middle class blacks but failed to

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struggle for economic self-determination has recently focused on the regulation of Indian gaming. See, e.g., Paul H. Brietzke & Teresa L. Kline, *The Law and Economics of Native American Casinos*, 78 NEB. L. REV. 263 (1999); Carole E. Goldberg-Ambrose, *Pursuing Tribal Economic Development at "The Bingo Palace,"* 29 ARIZ. ST. L.J. 97 (1997); Jess Green, *Economic Development and Gaming*, 9 ST. THOMAS L. REV. 149 (1996); Eric Henderson, *Indian Gaming: Social Consequences*, 29 ARIZ. ST. L.J. 205 (1997); Karen S. McFadden, *The Stakes Are Too High to Gamble Away Tribal Self-Government, Self-Sufficiency, and Economic Development when Amending the Indian Gaming Regulatory Act*, 21 IOWA J. CORP. L. 807 (1996); Rebecca Tsosie, *Negotiating Economic Survival: The Consent Principle and Tribal-State Compacts Under the Indian Gaming Regulatory Act*, 29 ARIZ. ST. L.J. 25 (1997). For a general discussion of Native American economic development efforts, see PUBLIC POLICY IMPACTS ON AMERICAN INDIAN ECONOMIC DEVELOPMENT: WHAT CAN TRIBES DO? STRATEGIES AND INSTITUTIONS IN AMERICAN INDIAN ECONOMIC DEVELOPMENT (Stephen Cornell & Joseph P. Kalt eds., 1992).

51. See Suggs, *supra* note 15, at 490-493.

52. See, e.g., McFarlane, *supra* note 7, at 339 (noting that the "Empowerment Zones Program's goal is to attract businesses back to the city into places that are racialized black and classified poor").

53. See ALDON D. MORRIS, *THE ORIGINS OF THE CIVIL RIGHTS MOVEMENT: BLACK COMMUNITIES ORGANIZING FOR CHANGE* 282-90 (1984) (describing the development of "local movement centers" during the civil rights movement and their critical importance in facilitating mass mobilization to achieve political enfranchisement); see also RHODA LOIS BLUMBERG, *CIVIL RIGHTS: THE 1960S FREEDOM STRUGGLE* (1984); TAYLOR BRANCH, *PARTING THE WATERS: AMERICA IN THE KING YEARS, 1954-1963* (1988); THOMAS R. BROOKS, *WALLS COME TUMBLING DOWN: A HISTORY OF THE CIVIL RIGHTS MOVEMENT 1940-1970* (1974); DAVID GARROW, *BEARING THE CROSS: MARTIN LUTHER KING, JR., AND THE SOUTHERN CHRISTIAN LEADERSHIP CONFERENCE* (1986); ROBERT WEISBROT, *FREEDOM BOUND: A HISTORY OF AMERICA'S CIVIL RIGHTS MOVEMENT* (1990).

adequately address the needs of the poor.<sup>54</sup> In response, civil rights organizations began to devise strategies explicitly targeting economic disadvantage. For instance, the Southern Christian Leadership Conference (SCLC), in addition to struggling for political equality in the South, began to advocate for improved economic conditions in northern ghettos.<sup>55</sup> Martin Luther King, Jr.'s Poor People's Movement, launched in 1968, was the centerpiece of the SCLC strategy.<sup>56</sup> In order to advance full equality, King demanded an economic Bill of Rights that included decent incomes, housing, and full employment.<sup>57</sup> Other civil rights organizations, including the Student Nonviolent Coordinating Committee and the Congress of Racial Equality (CORE), also reoriented their programmatic missions to emphasize economic issues.<sup>58</sup>

As these grassroots efforts focused heightened attention on poverty and inequality, the federal government began instituting a series of policy initiatives that established the infrastructure of modern CED programs. Although urban renewal projects had been undertaken in the preceding decade,<sup>59</sup> what was unique about the 1960s was the emergence of a distinct policy framework that sought to redress the problems of urban disinvestment and poverty concentration through programs targeted at geographically discrete communities. Drawing upon the nationalist theme of economic self-sufficiency, these antipoverty initiatives were defined by a central commitment to fostering low-income community control and promoting local

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54. See KOTZ & KOTZ, *supra* note 23, at 253.

55. See Peller, *supra* note 47, at 833.

56. See KOTZ & KOTZ, *supra* note 23, at 248; see also DELGADO, *supra* note 23, at 18 (citing Martin Luther King, Jr.'s statement that it "made no sense to be able to sit down and order a hamburger if you could not afford one").

57. See William E. Forbath, *Constitutional Welfare Rights: A History, Critique and Reconstruction*, 69 *FORDHAM L. REV.* 1821, 1843 (2001) (citing MARTIN LUTHER KING, JR., *WHERE DO WE GO FROM HERE: CHAOS OR COMMUNITY?* 163, 193, 199-200 (1967)).

58. See CLAYBORNE CARSON, *IN STRUGGLE: SNCC AND THE BLACK AWAKENING OF THE 1960S* 105 (1981) ("The discussions of economics indicated a change in SNCC's conception of its own work."); KOTZ & KOTZ, *supra* note 23, at 166 (outlining the policy positions set forth by the Congress of Racial Equality (CORE) in 1965, which included creating jobs for the poor, instituting a minimum wage, guaranteeing a minimum annual income for the unemployed, and increasing the availability of affordable housing); see also AUGUST MEIER & ELLIOTT RUDWICK, *CORE, A STUDY IN THE CIVIL RIGHTS MOVEMENT, 1942-1968* (1973); NEDLC, *A LAWYER'S MANUAL*, *supra* note 47, at 3; HOWARD ZINN, *SNCC: THE NEW ABOLITIONISTS* (Greenwood Publishing Group 1985) (1964).

59. See Quinones, *Redevelopment Redefined*, *supra* note 14, at 700-01; see also Housing Act of 1949, Pub. L. No. 81-171, ch. 338, § 104, 63 Stat. 416 (originally codified at 42 U.S.C. § 1454 (1988)), omitted by the Housing and Community Development Act of 1974, Pub. L. No. 93-383, § 116(a), 88 Stat. 633, 652 (current version as amended at 42 U.S.C. § 1441 (2001)); Urban Renewal Act of 1954, Pub. L. 560 ch. 649, § 301, 68 Stat. 590, codified at 42 U.S.C. § 5301 (1954) (authority to make grants terminated on Jan. 1, 1975).



empowerment.

The template for this neighborhood-based approach came from the Ford Foundation's Gray Areas Project in New Haven and Mobilization for Youth in New York City, which were established in the early 1960s to revitalize economically disadvantaged communities through the provision of job training, education, and family services.<sup>60</sup> This model was subsequently codified as federal policy when President Lyndon Johnson initiated the "War on Poverty" with the creation of the Community Action Program (CAP) under the Economic Opportunity Act (EOA) of 1964.<sup>61</sup> CAP was designed to increase neighborhood control over the implementation of antipoverty efforts by delegating authority to community action agencies to conduct programs in the areas of education, health, job training, housing, social services, and economic development.<sup>62</sup> To promote local control, the EOA required that all CAP services be designed and administered with the "maximum feasible participation" of community residents.<sup>63</sup> Although the EOA has been criticized as ineffective in spurring local participation in economic development planning,<sup>64</sup> it did lead to the growth of what would become critical actors in the evolution of CED—community development corporations (CDCs). In particular, the 1966 Special Impact Program amendment to the EOA established a federal funding stream targeted to support CDCs,<sup>65</sup> which were typically structured as nonprofit organizations focused on urban redevelopment.<sup>66</sup> As a result, nearly one hundred first generation CDCs were

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60. See Lemann, *supra* note 2; Shah, *supra* note 2, at 222-26.

61. See Economic Opportunity Act of 1964, Pub. L. No. 88-452, § 201, 78 Stat. 508 (1964) (repealed 1981); see also McFarlane, *supra* note 7, at 317-18. For historical overviews of neighborhood-based CED programs, see BERNARD J. FRIEDAN & MARSHALL KAPLAN, *THE POLITICS OF NEGLECT: URBAN AID FROM MODEL CITIES TO REVENUE SHARING* (1975); ROBERT HALPERN, *REBUILDING THE INNER CITY: A HISTORY OF NEIGHBORHOOD INITIATIVES TO ADDRESS POVERTY IN THE UNITED STATES* (1995); Bryan M. Phifer, E. Frederick List & Boyd Faulkner, *History of Community Development in America*, in *COMMUNITY DEVELOPMENT IN AMERICA* 18 (James A. Christenson & Jerry W. Robinson, Jr. eds., 1980).

62. See HALPERN, *supra* note 61, at 108; McFarlane, *supra* note 7, at 317-18, Shah, *supra* note 2, at 226.

63. See Economic Opportunity Act § 201, *supra* note 61.

64. See HALPERN, *supra* note 61, at 115-17; Shah, *supra* note 2, at 229; see also DANIEL MOYNIHAN, *MAXIMUM FEASIBLE MISUNDERSTANDING* (1969).

65. See NEAL R. PEIRCE & CAROL F. STEINBACH, *CORRECTIVE CAPITALISM: THE RISE OF AMERICA'S COMMUNITY DEVELOPMENT CORPORATIONS* 20 (1987).

66. See HALPERN, *supra* note 61, at 131-37; see also EDWARD G. GOETZ, *SHELTER BURDEN: LOCAL POLITICS AND PROGRESSIVE HOUSING POLICY* 115 (1993) ("[I]n the early 1960s, the CDC was seen as the means by which poor neighborhoods might achieve a greater measure of political and economic power."); PETERMAN, *supra* note 47, at 49 (stating that CDCs were viewed as "tangible ways of focusing activism and bringing about grassroots development through self-help efforts"); Shah, *supra* note 2, at 228 (noting that CDCs began as "bottom-up, neighborhood initiatives, organizing around an ideology of

formed in the 1960s to facilitate job creation in distressed urban neighborhoods.<sup>67</sup>

Additional antipoverty initiatives were launched in the 1960s and 1970s under the auspices of promoting local control. In 1966, Johnson set forth his last major antipoverty initiative, the Model Cities Program,<sup>68</sup> which again sought to improve the physical infrastructure of distressed communities while incorporating local residents into the planning and implementation process.<sup>69</sup> In 1974, the Ford Administration terminated Model Cities and instituted the Community Development Block Grant (CDBG) Program to allocate funds through the Department of Housing and Urban Development (HUD) to states and municipalities, which were given discretion to develop revitalization strategies that aligned with local priorities.<sup>70</sup> The CDBG Program solidified the growing base of CDCs by shifting the focus of redevelopment to local municipalities, which often enlisted CDCs to assist them in their revitalization efforts.<sup>71</sup> President James Carter extended the concept of allocating federal funding for discretionary spending on local CED projects under the Urban Development Action Grants Program.<sup>72</sup> As these policies demonstrate, a significant outgrowth of civil rights activism was an evolving institutional structure of CED designed to improve the economic conditions of low-income communities through the devolution of decision-making authority.<sup>73</sup>

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community empowerment in order to challenge the power and racism and large urban bureaucracies"); Michael Leo Owens, *Political Action and Black Church-Associated Community Development Corporations* (2000) (Comm-Org: The Online Conference on Community Organizing and Development) (stating that the CDC was identified "as a nongovernmental institution that could become a catalyst for urban blacks to achieve greater degrees of political power, especially over public policymaking"), at <http://comm-org.utoledo.edu/papers2000/owens/owens.htm>.

67. See Stoecker, *supra* note 31, at 2.

68. See Model Cities Act of 1966, Pub. L. 89-754, § 101, 80 Stat. 1255 (codified at 12 U.S.C. § 1702 and 42 U.S.C. §§ 1453, 3301 (1966)); see also Lemann, *supra* note 2, at 6; McFarlane, *supra* note 7, at 318-19.

69. See McFarlane, *supra* note 7, at 318.

70. See Housing and Community Development Act of 1974, Pub. L. 93-383, § 101, 88 Stat. 633, (codified as 42 U.S.C. § 5301 (2001)); see also Quinones, *Redevelopment Redefined*, *supra* note 14, at 703-04; Shah, *supra* note 2, at 229-30.

71. See PETERMAN, *supra* note 47, at 50 (stating that the Community Development Block Grant (CDBG) Program "shifted the focus of neighborhood problem solving from federal agencies to local municipalities, which in turn frequently sought not-for-profit community organizations to propose and carry out community development initiatives").

72. See Housing and Community Development Act of 1977, Pub. L. No. 95-128, § 119, 91, Stat. 1125 (1977) (codified as amended at 42 U.S.C. § 5318 (2001)).

73. Critics of these federal CED initiatives argue that the movement to block grant funding represented by CDBGs and Urban Development Action Grants actually thwarted local control. See Shah, *supra* note 2, at 229-30 (claiming that CDBG funding was allocated directly to states and municipalities and that "no longer was there any attempt to encourage community involvement in decision making").

### 3. *Grassroots organizing for economic justice.*

In contrast to the neighborhood-based, self-sufficiency paradigm reflected in federal CED policies, an alternative antipoverty model emerged from the civil rights era, one that sought to stimulate grassroots political action to advance a broad-based, redistributive economic agenda. Advocates of this model were influenced not only by the heightened concern within civil rights circles about poverty issues, but also by the distinct philosophical approach and tactical innovations of the increasingly prominent community organizing movement.<sup>74</sup> The forebears of this movement, such as Saul Alinsky and his Industrial Areas Foundation,<sup>75</sup> worked to build local power, cultivate indigenous leadership, and mobilize the poor.<sup>76</sup> The fusion of the new civil

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74. See Scott L. Cummings & Ingrid V. Eagly, *A Critical Reflection on Law and Organizing*, 48 UCLA L. REV. 443, 460-65 (2001). For a general discussion of community organizing, see PETER BACHRACH & MORTON S. BARATZ, *POWER AND POVERTY: THEORY AND PRACTICE* (1970); NEIL BETTEN & MICHAEL J. AUSTIN, *THE ROOTS OF COMMUNITY ORGANIZING 1917-1939* (1990); DOUGLAS P. BIKLEN, *COMMUNITY ORGANIZING: THEORY AND PRACTICE* (1983); KIM BOBO, JACKIE KENDALL & STEVE MAX, *ORGANIZING FOR SOCIAL CHANGE: A MANUAL FOR ACTIVISTS IN THE 1990S* (2d ed. 1996); BOYTE, *supra* note 23; *COMMUNITY ORGANIZING* (GEORGE BRAGER, HARRY SPECHT & JAMES L. TORCZYNER eds., 2d ed. 1987); ROBERT FISHER, *LET THE PEOPLE DECIDE: NEIGHBORHOOD ORGANIZING IN AMERICA* (1994); ROSS GITTELL & AVIS VIDAL, *COMMUNITY ORGANIZING: BUILDING SOCIAL CAPITAL AS A DEVELOPMENT STRATEGY* (1998); SI KAHN, *HOW PEOPLE GET POWER: ORGANIZING OPPRESSED COMMUNITIES FOR ACTION* (1970); SI KAHN, *ORGANIZING: A GUIDE FOR GRASSROOTS LEADERS* (1982); CLARENCE KING, *ORGANIZING FOR COMMUNITY ACTION* (1948); JACQUELINE B. MONDROS & SCOTT M. WILSON, *ORGANIZING FOR POWER AND EMPOWERMENT* (1994); THE O.M. COLLECTIVE, *THE ORGANIZER'S MANUAL* (1971); *ORGANIZING FOR COMMUNITY WELFARE* (Mayer N. Zald ed., 1967); RACHELLE B. WARREN & DONALD I. WARREN, *THE NEIGHBORHOOD ORGANIZER'S HANDBOOK* (1977); Dave Beckwith & Cristina Lopez, *Community Organizing: People Power from the Grassroots* (1997) (Comm-Org: The Online Conference on Community Organizing and Development), at <http://comm-org.utoledo.edu/papers97/beckwith.htm>; Douglas R. Hess, *Community Organizing, Building and Developing: Their Relationship to Comprehensive Community Initiatives* (1999) (Comm-Org: The Online Conference on Community Organizing and Development), at <http://comm-org.utoledo.edu/papers99/hess3.htm>; *Perspectives on Low-Income Organizing*, 12 ORGANIZING: NEWSL. ON JOBS, TRANSP. & WELFARE REFORM ORGANIZING (Jan. 1999), at <http://www.communitychange.org/organizing/Persp12.htm>.

75. See DELGADO, *supra* note 23, at 21-23. Saul Alinsky's organizing strategy focused on building neighborhood-based "organizations of organizations" that brought together labor, churches, and other community organizations. See GARY DELGADO, *BEYOND THE POLITICS OF PLACE: NEW DIRECTIONS IN COMMUNITY ORGANIZATION* 9 (1997). For a review of Alinsky's life and organizing philosophy, see SAUL ALINSKY, *REVELLE FOR RADICALS* (1946); SAUL D. ALINSKY, *RULES FOR RADICALS: A PRACTICAL PRIMER FOR REALISTIC RADICALS* (1971); MARION K. SANDERS, *THE PROFESSIONAL RADICAL: CONVERSATIONS WITH SAUL ALINSKY* (1970); see also ROBERT BAILEY, JR., *RADICALS IN URBAN POLITICS: THE ALINSKY APPROACH* (1974); SANFORD D. HORWITT, *LET THEM CALL ME REBEL: SAUL ALINSKY—HIS LIFE AND LEGACY* (1989).

76. See Boyte, *supra* note 24, at 224-25; see also DELGADO, *supra* note 75, at 10-11. An important application of this new theory of organizing in the workers' rights context was

rights sensibility and the rich tradition of community organizing generated a unique brand of community-based advocacy that promoted cross-racial alliances for economic justice.<sup>77</sup>

One of the earliest examples of this new emphasis on antipoverty organizing was NWRO, which was officially established in 1967 by George Wiley, the former associate national director of CORE.<sup>78</sup> In many ways, NWRO was a direct product of CAP. The community action agencies created under CAP became the initial laboratories for welfare rights organizing, as community action workers—confronted by thousands of neighborhood residents who qualified for, but were not receiving, welfare benefits—began to organize residents into groups with common welfare grievances.<sup>79</sup> Local organizations began training welfare recipients as welfare rights advocates and mounting “mass benefit campaigns.”<sup>80</sup> It was from “this welter of organizing activity, grievances and rights talk” that NWRO emerged.<sup>81</sup>

The specific idea of fostering a national movement of welfare recipients evolved through discussions between Wiley, Frances Fox Piven, and Richard Cloward. Piven and Cloward argued that a mass welfare drive would expand benefits to millions of eligible persons and ultimately force the federal government to drastically reorganize the welfare system—possibly through the imposition of a national guaranteed minimum income.<sup>82</sup> Persuaded by this idea, Wiley developed an organizational structure in NWRO that attempted to link local welfare rights groups into a coordinated movement on behalf of poor

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Cesar Chavez’s successful organizing drives among poor, mostly Mexican, migrant field workers in central California in the mid-1960s. *See* DELGADO, *supra* note 23, at 22 (describing how Chavez instituted community unions and created food and gas-buying clubs to build the social cohesion necessary to later challenge growers on wage, hours, and working conditions issues); *see also* RODOLFO ACUÑA, *OCCUPIED AMERICA: A HISTORY OF CHICANOS* 325-27 (1988); SUSAN FERRISS & RICARDO SANDOVAL, *THE FIGHT IN THE FIELDS: CESAR CHAVEZ AND THE FARMWORKERS MOVEMENT* (1997); RONALD B. TAYLOR, *CHAVEZ AND THE FARM WORKERS* (1975).

77. *See, e.g.*, George A. Wiley, *Building a New Majority: The Movement for Economic Justice*, SOC. POL’Y, Sept.-Oct. 1973, at 31.

78. *See* PIVEN & CLOWARD, *supra* note 23, at 276; *see also* DELGADO, *supra* note 23, at 23 (noting that the National Welfare Rights Organization (NWRO) represented the merging of CORE’s civil rights strategies with the community organizing tactics of Alinsky). *See generally* GUIDA WEST, *THE NATIONAL WELFARE RIGHTS MOVEMENT: THE SOCIAL PROTEST OF POOR WOMEN* (1981) (providing a comprehensive analysis of NWRO).

79. *See* Forbath, *supra* note 57, at 1848; *see also* Jonathan Zasloff, *Children, Families, and Bureaucrats: A Prehistory of Welfare Reform*, 14 J.L. & POL. 225, 268-69 (1998).

80. *See* Forbath, *supra* note 57, at 1849.

81. *See id.* at 1850.

82. *See* KOTZ & KOTZ, *supra* note 23, at 182-87; *see also* PIVEN & CLOWARD, *supra* note 23, at 276 (noting that the overarching goal of the welfare rights movement was to generate a huge increase in the number of people on relief in order to ignite a political crisis that “might lead national political leaders to federalize the relief system and establish a national minimum income standard”).

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people.<sup>83</sup> Welfare rights were chosen as the focal point of organizing efforts because it was determined that the promise of increased benefits would solidify a national membership base that would become the foundation for real political power.<sup>84</sup>

Governed by Wiley and a group of welfare recipients known as the “founding mothers,”<sup>85</sup> NWRO implemented local organizing campaigns designed to force welfare offices to pay special grants for food, rent, clothing, and furniture that few eligible recipients even knew about, let alone received.<sup>86</sup> These campaigns were successful in helping large groups of recipients obtain special benefits while generally encouraging other eligible individuals to apply for welfare.<sup>87</sup> The campaigns also served to increase NWRO’s membership base and build permanent local organizations of welfare recipients. At its peak, NWRO had 22,000 dues-paying members nationwide and acted as the coordinating center for scores of local- and state-level welfare rights organizations.<sup>88</sup> As NWRO gained organizational strength and national prominence, it turned to larger lobbying and advocacy efforts—working with the SCLC on its Poor People’s Campaign,<sup>89</sup> collaborating on successful legal challenges to welfare policies,<sup>90</sup> and playing a critical role in the defeat of President Richard Nixon’s Family Assistance Plan.<sup>91</sup>

However, in the late 1960s and early 1970s, many antipoverty activists began to question the limited focus on welfare issues,<sup>92</sup> and sought to activate a

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83. See KOTZ & KOTZ, *supra* note 23, at 190-91 (discussing the first national welfare rights protests coordinated by Wiley’s Poverty/Rights Action Center, which served as the precursor to NWRO).

84. See *id.* at 192-93.

85. See *id.* at 212-17.

86. See PIVEN & CLOWARD, *supra* note 23, at 301.

87. See KOTZ & KOTZ, *supra* note 23, at 229. NWRO organizers were also successful at obtaining other benefits at the local level. See *id.* at 235-36 (describing organizing victories that stopped ghetto stores from selling rotten food, eliminated a telephone company phone service deposit charge on welfare recipients, and allowed welfare recipients to obtain credit from local stores).

88. See PIVEN & CLOWARD, *supra* note 23, at 294-95.

89. See KOTZ & KOTZ, *supra* note 23, at 248-57.

90. See *id.* at 258-59; see also Lucie E. White, *Goldberg v. Kelly on the Paradox of Lawyering for the Poor*, 56 BROOK. L. REV. 861, 870-71 (1990) (noting that *Goldberg v. Kelly* was won against the backdrop of the welfare rights movement).

91. See KOTZ & KOTZ, *supra* note 23, at 266-78; Zasloff, *supra* note 79, at 274-75. *But see* PIVEN & CLOWARD, *supra* note 23, at 345-46 (arguing that NWRO’s role in the defeat of Nixon’s Family Assistance Plan was minimal). NWRO’s main objections to the Family Assistance Plan, which would have eliminated Aid to Families with Dependent Children and established a guaranteed minimum income, were that it would have imposed a strict work requirement and provided for inadequate cash benefits. See Zasloff, *supra* note 79, at 276-77.

92. See Bachmann, *supra* note 23, at 29.

broader reformist agenda. Faced with hardening opposition to welfare rights<sup>93</sup> and a declining membership base,<sup>94</sup> Wiley left NWRO and started a new organization, the Movement for Economic Justice. Conceptualized as a broad-based, multiracial organization dedicated to advancing “the economic interests of a majority of Americans,”<sup>95</sup> the Movement for Economic Justice sought to create grassroots coalitions of welfare recipients, the working poor, and the middle class to advocate for issues such as income redistribution, tax reform, and national health insurance.<sup>96</sup> This same populist spirit also led to the establishment of ACORN, which was created when NWRO’s Wade Rathke moved to Little Rock, Arkansas in 1970 to implement “an organizing strategy that would bridge the gap between whites and non-whites, working people and welfare recipients, integrating them into a permanent, democratic organization.”<sup>97</sup> Although Rathke, who was soon joined by Gary Delgado, began by concentrating on the organization of welfare recipients,<sup>98</sup> the “Arkansas experiment,” as it was termed, sought to advance the conception of a “majority” strategy that would organize low- and moderate-income people around a variety of issues that affected their lives.<sup>99</sup> The ultimate goal of ACORN’s issue-based organizing was to redistribute the balance of power in favor of the poor and working class.<sup>100</sup>

Against the backdrop of decreasing local public services and corporate-driven urban renewal programs,<sup>101</sup> ACORN’s organizing focused on economic issues, such as special needs welfare programs, tax reform, generic drug

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93. See DELGADO, *supra* note 23, at 42 (noting that, in response to NWRO’s activities, many states eliminated special grants and instituted flat grants, which effectively undermined NWRO’s central organizing strategy); see also PIVEN & CLOWARD, *supra* note 23, at 305-07.

94. See PIVEN & CLOWARD, *supra* note 23, at 309-31 (arguing that NWRO’s focus on building complex organizational structures and privileging lobbying efforts over local organizing led to a reduction in its membership).

95. KOTZ & KOTZ, *supra* note 23, at 296; see also Boyte, *supra* note 24, at 229 (“NWRO head George Wiley argued for a new ‘majority approach’ in the aftermath of the welfare lobby’s failure to win passage of guaranteed-income legislation.”).

96. See KOTZ & KOTZ, *supra* note 23, at 296.

97. Bachmann, *supra* note 23, at 29; see also DELGADO, *supra* note 23, at 39, 50; KOTZ & KOTZ, *supra* note 23, at 300.

98. See DELGADO, *supra* note 23, at 50-54.

99. See *id.* at 39, 47-48.

100. See Boyte, *supra* note 24, at 230:

ACORN’s community-based chapters, organized around issues, specifically sought “power for the majority.” As the ACORN manual put it, “Behind the organization’s concern with these issues is a basic understanding which says that all these issues are mere manifestations of a much more fundamental issue: the distribution of power in this country.”

*Id.*; see also Bachmann, *supra* note 23, at 30. Although ACORN’s scale distinguished it during the 1970s and 1980s, there were other organizations engaged in similar types of organizing work, such as Massachusetts Fair Share and the Citizens Action League in California.

101. See DELGADO, *supra* note 23, at 9.

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pricing, “lifeline” electric rates, and property taxes.<sup>102</sup> ACORN also worked to block environmentally hazardous utility sites,<sup>103</sup> achieve stricter enforcement of federal food stamp regulations, and improve local health care and employment practices.<sup>104</sup> In the early 1970s, ACORN entered local electoral politics, advocating a poor people’s agenda that included free medical care, a public defender system, the elimination of the state income tax for low-income people, and higher welfare benefits.<sup>105</sup> Toward the end of the decade, ACORN sought to solidify its foundations by expanding into twenty states<sup>106</sup> and promoting greater participation of low- to moderate-income people in the Democratic Party.<sup>107</sup> As ACORN grew into new communities, its organizers implemented the “ACORN model,” which consisted of organizing drives that culminated in the establishment of multi-issue, membership-based organizations.<sup>108</sup>

As the experiences of NWRO and ACORN highlight, the 1970s witnessed a surge of local organizing, grounded in the political activism of the civil rights era and focused on ameliorating poverty. In contrast to the nationalist emphasis on community-based business ownership and the locally targeted revitalization efforts of CDCs, the strategies deployed by NWRO and ACORN represented the emergence of a distinct antipoverty approach that used grassroots political action to promote economic justice.

#### B. *Transition: Bilateral Challenges to the Economic Justice Movement*

Despite the initial strength of the economic justice movement, serious obstacles to its continued vitality were raised in the following decades. Most significantly, the advent of Reagan neoconservatism in the 1980s followed by Clintonian neoliberalism in the 1990s led to a deterioration in the economic

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102. *See id.* at 50-55, 99-100.

103. *See id.* at 92-96.

104. *See id.* at 58; *see also* BOYTE, *supra* note 23, at 96-97 (describing ACORN campaigns to block “right to work” legislation, organize domestic workers, and establish food cooperatives).

105. *See* DELGADO, *supra* note 23, at 56.

106. *See id.* at 125-33 (discussing ACORN’s “20/80 Plan”). ACORN eventually developed into the largest community organization in the United States, with over 50,000 members in twenty-seven states. *See id.* at xvi.

107. *See id.* at 146-50.

108. *See id.* at 63-76. In particular, the ACORN model sought to build a “mass community organization” able to develop:

sufficient organizational power to achieve its individual members’ interest [sic], its local objectives, and in connection with other groups, its state interests. The organization must be permanent with multi-issued concerns achieved through multi-tacticed [sic] direct action, with membership participating in policy, financing and achievement of group goals and community improvement.

*Id.* at 63 (quoting “ACORN Community Organizing Model”).

conditions of the poor and shifted antipoverty programs toward market-based reform strategies. At the same time, many leftist intellectuals began to adopt a postmodern orientation to social criticism that promoted a politics rooted in local action and empowerment. As this Part discusses, these developments redirected economic justice efforts away from the large-scale political struggle initiated by activist groups such as NWRO and ACORN and toward a localized, market-oriented CED approach.

1. *Neoconservatism, neoliberalism, and the poor: Toward a market-based antipoverty agenda.*

Beginning in the 1980s, Presidents Ronald Reagan and George Bush initiated a retrenchment of government-sponsored antipoverty programs.<sup>109</sup> This occurred as a part of a strong backlash against the very entitlement programs that economic justice activists had sought to expand a decade before. As spending on Aid to Families with Dependent Children (AFDC) and other means-tested public assistance increased from \$7.8 billion in 1960 to \$40.7 billion in 1976,<sup>110</sup> many began to question the legitimacy of welfare, especially given signs of the slowing domestic economy. Moreover, the increasingly bureaucratic nature of welfare administration and the portrayal of single African American mothers as undeserving welfare recipients fueled public opposition to federal entitlement programs.

Welfare thus became the main target for cutbacks under the Reagan Administration, whose anti-government agenda was theorized by influential neoconservative scholars of the day.<sup>111</sup> Against the backdrop of recession,<sup>112</sup>

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109. See Robert Fisher, *Community Organizing in the Conservative '80s and Beyond*, SOC. POL'Y, Fall 1994, at 11, 11:

Begun in 1981, the twelve years of Reagan/Bush presidencies promoted a neoconservative agenda grounded in right-wing programs, policies, and political discourse. Responding to the heightened demands of an emerging global economy and the challenged status of US corporations in it, neoconservatives sought to cut corporate and government costs. They went after labor unions, government programs, and claimant movements; they shifted even the limited political dialogue about human needs completely to corporate needs; they delegitimized the public sector and public life and pushed people into increasingly private spheres and private conceptions of the good life.

*Id.*; see also Ruth Margaret Buchanan, *Context, Continuity, and Difference in Poverty Law Scholarship*, 48 U. MIAMI L. REV. 999, 1028 (1994) ("The Reagan Administration's neoconservative domestic agenda drastically cut programs for disadvantaged groups, severely constrained the federal government's regulatory scope, and pursued a right wing 'social values' agenda that sought to roll back many of the preceding decades' gains in civil, women's, environmental, and consumer rights.").

110. See DAVID T. ELLWOOD, POOR SUPPORT: POVERTY IN THE AMERICAN FAMILY 32 (1988).

111. See, e.g., GEORGE GILDER, WEALTH AND POVERTY (1981); CHARLES MURRAY, LOSING GROUND: AMERICAN SOCIAL POLICY, 1950-1980 (1984).

112. See Buchanan, *supra* note 109, at 1029.



Reagan signed the Omnibus Budget Reconciliation Act of 1981, which dramatically reduced benefits and terminated significant numbers from the welfare rolls.<sup>113</sup> Although the poor recouped some of their lost benefits in the form of tax breaks, they suffered a net income loss,<sup>114</sup> which, in conjunction with tax cuts for upper-income individuals and corporations enacted under the Administration's program of supply-side economics, led to greater income inequality.<sup>115</sup> In the name of privatization and fiscal conservatism, Reagan also made cuts in other in-kind benefits to the poor, such as food stamps, Medicaid, and housing assistance;<sup>116</sup> curtailed funding for public education and health programs;<sup>117</sup> severely restricted support for free legal services;<sup>118</sup> and decreased funding for urban economic development initiatives.<sup>119</sup> These

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113. See ELLWOOD, *supra* note 110, at 41; see also TOM JOE & CHERYL ROGERS, BY THE FEW FOR THE FEW: THE REAGAN WELFARE LEGACY (1985); Buchanan, *supra* note 109, at 1029; Peter B. Edelman, *Toward a Comprehensive Antipoverty Strategy: Getting Beyond the Silver Bullet*, 81 GEO. L.J. 1697, 1721 (1993); David Stoesz, *Poor Policy: The Legacy of the Kerner Commission*, 71 N.C. L. REV. 1675, 1680-81 (1993).

114. See Stoesz, *supra* note 113, at 1681.

115. See Edelman, *supra* note 113, at 1720-21 (noting that policies in the 1980s "widened the gap between rich and poor" in part due to "changes in tax policy in 1981 [that] enabled the wealthy to keep a far larger portion of their income").

116. See *id.* at 1721-22.

117. See Richard Delgado, *Inequality "From the Top": Applying an Ancient Prohibition to an Emerging Problem of Distributive Justice*, 32 UCLA L. REV. 100, 130 n.204 (1984) (citing several news reports detailing cutbacks in federal health and education programs).

118. See Buchanan, *supra* note 109, at 1029-31 (discussing Reagan-era attacks on legal services); Ingrid V. Eagly, *Community Education: Creating a New Vision of Legal Services Practice*, 4 CLINICAL L. REV. 433, 438-39 (1998) (describing cutbacks on LSC funding and advocacy restrictions imposed during the 1980s); see also MARK KESSLER, LEGAL SERVICES FOR THE POOR 9 (1987); Richard L. Abel, *Law Without Politics: Legal Aid Under Advanced Capitalism*, 32 UCLA L. REV. 474, 547-48 (1985); Samuel Jan Brakel, *Legal Services for the Poor in the Reagan Years*, 17 CLEARINGHOUSE REV. 190 (1983); Matthew Diller, *Lawyering for Poor Communities in the Twenty-First Century*, 25 FORDHAM URB. L.J. 673, 673-74 (1998); Alan W. Houseman, *A Short Review of Past Poverty Law Advocacy*, 23 CLEARINGHOUSE REV. 1514, 1520-21 (1990); William P. Quigley, *The Demise of Law Reform and the Triumph of Legal Aid: Congress and the Legal Services Corporation from the 1960's to the 1990's*, 17 ST. LOUIS U. PUB. L. REV. 241, 255-59 (1998).

119. See PEIRCE & STEINBACH, *supra* note 65, at 29 (stating that, under President Ronald Reagan, the Community Services Administration and the Office of Neighborhood Development were dismantled, subsidies for low-income housing were decimated, Urban Development Action Grants shrunk, and the Economic Development Administration suffered budget cuts); Susan S. Fainstein & Ann Markusen, *The Urban Policy Challenge: Integrating Across Social and Economic Development Policy*, 71 N.C. L. REV. 1463, 1475 (1993) (noting that funding for the CDBG Program and the Economic Development Administration decreased under the Reagan and Bush Administrations); Donald A. Hicks, *Revitalizing Our Cities or Restoring Ties to Them? Redirecting the Debate*, 27 U. MICH. J.L. REF. 813, 835 (1994) (noting that during the Reagan Administration, the Urban Development Action Grants were terminated); see also James A. Kushner, *Focus on Urban America: Growth Management and the City*, 12 YALE L. & POL'Y REV. 68, 89 (1994)

policies coincided with structural shifts in the economy, including the exodus of high-paying manufacturing jobs from urban areas, which increased economic insecurity among low-wage workers and led to the spatial concentration of poverty and joblessness.<sup>120</sup> As a result, the 1980s witnessed a significant decrease in the real wages of the poor,<sup>121</sup> rising unemployment,<sup>122</sup> and increased poverty and inequality.<sup>123</sup>

In this political and economic environment, activists began to focus greater attention on market-based strategies to address issues of urban poverty.<sup>124</sup> CDCs emerged during this period as the critical institutional apparatus for implementing the market approach. Analysts have suggested that the prominence of the CDC model during the 1980s was the result of community-based organizations assimilating the dominant market ideology into their advocacy strategies.<sup>125</sup> The rise of CDCs was also a matter of necessity: In a time of resource scarcity, CDCs were one of the few politically viable antipoverty approaches, embracing the value of self-help and promoting private-public partnerships.<sup>126</sup> Further, CDCs were considered effective

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(“Under the Reagan and Bush Administrations, central cities experienced dramatic disinvestment and neglect because of massive cuts in federal infrastructure and other subsidy programs.”).

120. See generally WILLIAM JULIUS WILSON, *THE TRULY DISADVANTAGED* (1987); WILLIAM JULIUS WILSON, *WHEN WORK DISAPPEARS: THE WORLD OF THE NEW URBAN POOR* (1996).

121. See POLLIN & LUCE, *supra* note 6, at 4-5, 30-32 (noting that, under the Reagan and Bush Administrations, the real wages of nonsupervisory workers decreased steadily as the value of the minimum wage fell sharply from a high of over six dollars per hour to a low of under five dollars per hour).

122. See *id.* at 33-35; Robert Pollin, *Anatomy of Clintonomics*, 3 *NEW LEFT REV.* (n.s.) 17, 29 (2000) (showing an unemployment rate of 7.1% under the Reagan and Bush Administrations).

123. See Pollin, *supra* note 122, at 36.

124. See Fisher, *supra* note 109, at 13:

As economic support for social services and solving social problems declined due to opposition at the federal level and shrinking tax bases at the local, and as political discourse in the nation revolved around free market solutions to *all* problems, community organizing efforts moved, often very reluctantly, into the business of economic development.

*Id.*

125. See *id.* at 13-15; see also PEIRCE & STEINBACH, *supra* note 65, at 34 (quoting a CDC director who claimed that the CDCs of the 1980s were less confrontational than their predecessors, approaching development from a more technical and less political perspective); PETERMAN, *supra* note 47, at 49 (“CDCs can be thought of as a conservative, market-driven approach to neighborhood development.”).

126. See FISHER, *supra* note 74, at 185:

The absence of public support . . . and the necessity of seeking funds from and joining in partnerships with private sector leaders all push CDCs away from politics and an analysis of power. This lack of fiscal and political support has forced CDCs to accommodate themselves to rather than redirect the course of the free market.

*Id.*; Thomas J. Lenz, *Neighborhood Development: Issues and Models*, *SOC. POL'Y*, Spring 1988, at 25 (stating that many neighborhood development organizations were motivated by a

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vehicles for dealing with localized poverty, since they were physically situated in neighborhoods suffering from disinvestment and joblessness. Thus, in addition to curtailed social programs and heightened economic insecurity for the poor, one of the main legacies of the Reagan-Bush years was the increasing importance of market-oriented CDCs in local revitalization efforts.

Although the inauguration of President Bill Clinton ushered in renewed hope for social justice, Clinton's economic policies did little to improve conditions in distressed communities. Clinton promoted a neoliberal economic agenda,<sup>127</sup> which, despite its pretensions to foster equitable economic growth,<sup>128</sup> disproportionately benefited the wealthy and left behind the poor.<sup>129</sup> This agenda was characterized in the international arena by free trade,

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belief that “[g]overnment and business can form creative partnerships to direct funds into the inner city, and citizen groups who know best what is needed can implement the projects”); Stoecker, *supra* note 31, at 2 (“In the 1980s the number of CDCs expanded to as many as 2,000 as debt-weary governments at all levels withdrew from the pressing problem of urban poverty.”); Hess, *supra* note 74 (“During the cutbacks of the 1980s, CDCs increased their ‘income-generating activities such as housing management or construction projects . . . [and increased the number of] partnerships with private sector developers, financial institutions and corporations.’” (quoting William Rohe, *Do Community Development Corporations Live Up to Their Billing? A Review and Critique of Research Findings*, in *SHELTER AND SOCIETY: THEORY, RESEARCH, AND POLICY FOR NONPROFIT HOUSING* 184 (C. Theodore Koebel ed., 1998))); Kristina Smock, *Comprehensive Community Initiatives: A New Generation of Urban Revitalization Strategies* (1997) (Comm-Org: The Online Conference on Community Organizing and Development), at <http://comm-org.utoledo.edu/papers97/smock/ccwebj.htm>:

In the 1980s, the trend toward partnership-based initiatives continued as organizations responded to increasing federal cutbacks and the privatization of public services . . . . As a result, confrontational tactics by neighborhood groups became less and less productive . . . . This inevitably resulted in a shift to consensus-based strategies that contrasted dramatically with the political empowerment tradition of the 1930s, 1960s, and—to some degree—the 1970s.

*Id.*

127. Roberto Unger offers a general description of neoliberalism:

In its most abstract and universal form, neoliberalism is the program committed to orthodox macroeconomic stabilization, especially through fiscal balance, achieved more by containment of public spending than by increases in the tax take; to liberalization in the form of increasing integration into the world trading system and its established rules; to privatization, understood both more narrowly as the withdrawal of government from production and more generally as the adoption of standard Western private law; and to the deployment of compensatory social policies (“social-safety nets”) designed to counteract the unequalizing effects of other planks in the orthodox platform.

ROBERTO MANGABEIRA UNGER, *DEMOCRACY REALIZED: THE PROGRESSIVE ALTERNATIVE* 53 (1998).

128. For example, neoliberalism has been described as an effort to “marry social justice and economic efficiency” not by attempting to “change, reform, or manage . . . markets,” but rather by “improv[ing] the empowerment of . . . citizens to do better in these markets.” *Is Globalization Americanization?: Will Hutton and Anthony Giddens in Conversation*, *DISSENT*, Summer 2000, at 60.

129. See generally Pollin, *supra* note 122.

deregulated global financial and capital markets, and privatization of public enterprises.<sup>130</sup> On the domestic front, Clinton promoted a favorable business climate for American companies by dismantling significant public assistance programs, reducing taxes on the wealthy, and deregulating domestic financial markets. Most prominently, Clinton signed legislation to “end welfare as we know it,” abolishing AFDC and replacing it with Temporary Assistance to Needy Families—a welfare regime that imposes mandatory work requirements and strict time limits.<sup>131</sup> As a result of welfare reform, spending on family

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130. See NOAM CHOMSKY, PROFITS OVER PEOPLE: NEOLIBERALISM AND GLOBAL ORDER 20 (1999) (stating that the basic rules of neoliberalism are “liberalize trade and finance, let markets set price (‘get prices right’), end inflation (‘macroeconomic stability’), privatize”); ANTHONY GIDDENS, THE THIRD WAY: THE RENEWAL OF SOCIAL DEMOCRACY 14 (1998) (stating that neoliberals argue that the “world will get along best if markets are allowed to function with little or no interference”); GEORGE SOROS, THE CRISIS OF GLOBAL CAPITALISM: OPEN SOCIETY ENDANGERED 101 (1998) (“We live in a global economy that is characterized not only by free trade in goods and services but even more by the free movement of capital.”); Enrique R. Carrasco, *Law, Hierarchy, and Vulnerable Groups in Latin America: Towards a Communal Model of Development in a Neoliberal World*, 30 STAN. J. INT’L L. 221, 249 (1994) (noting that neoliberal “structural adjustment” programs “share two themes: liberalization of domestic and foreign trade, and privatization of often large and inefficient public enterprises”); Carlos Salinas De Gortari & Roberto Mangabeira Unger, *The Market Turn Without Neoliberalism*, 16 NEW PERSP. Q. 29, 31 (1999) (stating that, under neoliberalism, “free trade means that capital, together with goods and services should be free to roam the world” and that nations must “discipline public spending and . . . raise public-sector saving through budgetary discipline”). For a discussion of neoliberal development policy, see generally AFTER NEOLIBERALISM: WHAT NEXT FOR LATIN AMERICA? (Lance Taylor ed., 1999); CONTEMPORARY ECONOMIC THEORY: RADICAL CRITIQUES OF NEOLIBERALISM (Andriana Vlachou ed., 1999); NEOLIBERALISM REVISITED: ECONOMIC RESTRUCTURING AND MEXICO’S POLITICAL FUTURE (Gerardo Otero ed., 1996); STATES OR MARKETS: NEO-LIBERALISM AND THE DEVELOPMENT POLICY DEBATE (Christopher Colclough & James Manor eds., 1991); HENRY VELTMAYER, JAMES PETRAS & STEVE VIEUX, NEOLIBERALISM AND CLASS CONFLICT IN LATIN AMERICA: A COMPARATIVE PERSPECTIVE ON THE POLITICAL ECONOMY OF STRUCTURAL ADJUSTMENT (1997); WHAT KIND OF DEMOCRACY? WHAT KIND OF MARKET? LATIN AMERICA IN THE AGE OF NEOLIBERALISM (Philip D. Oxhorn & Graciela Ducatenzeiler eds., 1998); Rod Burgess, *Contemporary Macroeconomic Strategies and Urban Policies in Developing Countries: A Critical Review*, in THE CHALLENGE OF SUSTAINABLE CITIES: NEOLIBERALISM AND URBAN STRATEGIES IN DEVELOPING COUNTRIES (Rod Burgess, Marisa Carmona & Theo Kolstee eds., 1997); Pablo Gonzalez Casanova, *Globalism, Neoliberalism, and Democracy*, 23 SOC. JUST. 39 (1996); Keith Faulks, *The Rise of Neoliberalism*, 262 CONTEMP. DEV. 185 (1993); Milton Fisk, *Neoliberalism’s Crisis*, 22 REVISION 35 (1999); Ziya Onis, *The Limits of Neoliberalism*, 29 J. ECON. ISSUES 97 (1995); Adam Przeworski, *The Neoliberal Fallacy*, in CAPITALISM, SOCIALISM & DEMOCRACY REVISITED (Diamond & Plattner eds., 1993).

131. See Joel Handler, *Reforming/Deforming Welfare*, 4 NEW LEFT REV. (n.s.) 114, 115 (2000); see also Joel F. Handler, *The “Third Way” or the Old Way?*, 48 KAN. L. REV. 765 (2000). Specifically, in 1996, Clinton signed the welfare reform bill, which imposed a five-year lifetime limit on welfare benefits for adults, as well as the requirement that states must have 50% of their caseload working at least thirty hours per week by the year 2002. See PRWORA, *supra* note 26.

support declined sharply between 1992 and 1998,<sup>132</sup> during which time Clinton also reduced funding for food stamps and other nutrition assistance.<sup>133</sup> Although Clinton increased transfer payments to low-income workers by expanding the Earned Income Tax Credit, this increase did not fully compensate for the reduction in welfare.<sup>134</sup> Clinton also authorized large cuts in spending on education, science, transportation, and income security,<sup>135</sup> while endorsing a tax relief plan that disproportionately benefited the wealthiest income earners.<sup>136</sup>

Clinton's neoliberalism facilitated the creation of a flexible labor market that made it more difficult for low-income workers to secure stable, living wage jobs. In particular, liberalized trade and expanded global capital movements exacerbated domestic job insecurity by driving down wages and impeding union organizing,<sup>137</sup> while welfare reform pushed increasing numbers of workers into a crowded low-wage labor sector.<sup>138</sup> Although the unemployment rate declined under Clinton,<sup>139</sup> real wages dropped<sup>140</sup> and the poverty rate remained at the same level as under Reagan and Bush.<sup>141</sup> In addition, the combination of flagging wages and increased corporate profits<sup>142</sup> fueled widening inequality.<sup>143</sup>

Clinton's response to poverty issues marked a fundamental political shift. Under Reagan and Bush, the legitimacy of public assistance programs—while under attack from the Right—were not widely questioned on the Left. Clinton,

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132. See Pollin, *supra* note 122, at 26.

133. See *id.* at 26.

134. See *id.*

135. See *id.* at 24 (stating that, as a percent of gross domestic product, spending has declined in the areas of education (-9.2%), science (-10.1%), transportation (-11.2%), and income security (-16.0%).)

136. See *id.* at 22 (noting that, under the Tax Relief Act of 1997, the net effect “has been to cut taxes for the top 60 percent of the population, with the great bulk of the hand-out going to the top 20 percent”).

137. See Dan Clawson & Mary Ann Clawson, *What Has Happened to the US Labor Movement? Union Decline and Renewal*, 25 ANN. REV. SOC. 95, 101 (1999) (stating that globalization hurts unions by putting “core workers” in direct competition with “semiperipheral labor”); Pollin, *supra* note 122, at 19 (claiming that free trade between high and low-wage nations will lead to downward wage pressure in the high-wage economy).

138. For a discussion of welfare reform and the low-wage workforce, see Joel F. Handler, *Low-Wage Work “As We Know It”: What’s Wrong/What Can Be Done*, in HARD LABOR, *supra* note 15, at 3.

139. See Pollin, *supra* note 122, at 29 (citing an unemployment rate of 5.6%).

140. See *id.* at 35-36 (stating that the average wage for nonsupervisory workers under Clinton fell to \$12.37 per hour).

141. See *id.* at 36 (citing a poverty rate of 13.8%).

142. See *id.* at 42.

143. See PETER DREIER, JOHN MOLLENKOPF & TODD SWANSTROM, PLACE MATTERS: METROPOLITICS FOR THE TWENTY-FIRST CENTURY 13-16 (2001); see also Pollin, *supra* note 122, at 35 (stating that wage inequality increased sharply during the Clinton Administration).

however, broke with the Democrats' historic commitment to traditional poverty programs by embracing welfare reform and redefining antipoverty policy as a struggle to open up "new markets" passed over by the economic boom. In this way, Clinton's neoliberalism served to advance a pro-business agenda and inverted historic Democratic priorities: Under Clinton, the goal of poverty alleviation programs became market expansion, while the idea of income maintenance policies was largely discredited. Market-based CED replaced welfare as the touchstone of national antipoverty policy.<sup>144</sup>

Clinton's emphasis on market-driven revitalization efforts was most apparent in his Empowerment Zone Program,<sup>145</sup> created in 1993 in an effort to expand business activities in geographically identified low-income neighborhoods by offering tax benefits to employers that located within the zones.<sup>146</sup> In addition, as part of a broader market-based CED policy initiative,<sup>147</sup> Congress passed Clinton's New Markets Tax Credit, which was designed to spur private sector equity investments in low-income community businesses.<sup>148</sup> These programs underscored Clinton's effort to align

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144. See Kilborn, *supra* note 1, at A16 (stating that Clinton was "[d]eparting from the largely discredited conventions of welfare and charity" and "enlisting the private sector . . . [in] trying alternative approaches to aiding the poor").

145. See McFarlane, *supra* note 7, at 297 (characterizing the Empowerment Zones Program as a geographically-based, business-oriented, self-help initiative designed to ameliorate urban poverty):

[T]he Empowerment Zones strategy consciously and purposefully adopted an economic development, free market approach to community development. Thus, the enterprise-zone component of the program and its laissez-faire, anti-governmental regulatory emphasis significantly distinguishes the Empowerment Zones Program from the Model Cities Program. While the enterprise-zone concept can be traced to earlier international development efforts, the emphasis had become completely devoid of any social justice or welfare concerns.

*Id.* at 319. Although adopted by Clinton, the Empowerment Zone Program was previously championed by Republican Jack Kemp during his tenure as Secretary of Housing and Urban Development (HUD) under President George Bush. See Lemann, *supra* note 2, at 6.

146. See McFarlane, *supra* note 7, at 313; see also Wilton Hyman, *Empowerment Zones, Enterprise Communities, Black Business, and Unemployment*, 53 WASH. U. J. URB. & CONTEMP. L. 143 (1998). The Empowerment Zones Program was enacted in the Omnibus Budget Reconciliation Act of 1993, Pub. L. 103-66, § 13301(a), 107 Stat. 543-554, amended by Taxpayer Relief Act of 1997, Pub. L. No. 105-34, §§ 951-952, 111 Stat. 788, 885 (codified at I.R.C. §§ 1391-1397D (2001)).

147. The Community Renewal Tax Relief Act of 2000, signed into law on December 21, 2000, created the Renewal Communities Program, expanded the Empowerment Zones and Low-Income Housing Tax Credit (LIHTC), and initiated the New Markets Tax Credit and Venture Capital Program. See BRAD CAFTEL, NATIONAL ECONOMIC DEVELOPMENT AND LAW CENTER, COMMUNITY RENEWAL TAX RELIEF ACT OF 2000, at 1 (on file with author).

148. The New Markets Tax Credit will provide tax breaks designed to spur \$15 billion in investment in low-income neighborhoods. See I.R.C. § 45D (2001); UNITED STATES DEPARTMENT OF THE TREASURY, NEW MARKETS, at <http://www.cdfifund.gov/programs/newmarkets/index.html> (last visited Jan. 7, 2002); see also Robert Pear, *Congress Finishes Its Work By Adopting Spending Bill*, N.Y. TIMES, Dec. 16, 2000, at A1; CENTER FOR

antipoverty policies with his neoliberal economic agenda and marked the culmination of a two-decade-long ideological shift in favor of market-based antipoverty strategies.

## 2. *The postmodern intervention.*

As conservative and centrist politicians promoted market-based measures, the emergence of a distinct postmodern current in social theory<sup>149</sup> and jurisprudence<sup>150</sup> also shaped the direction of antipoverty advocacy, fostering a particular sensibility toward political action—which, for the purposes of this Part, is labeled micropolitics. The influence of postmodernism was not felt directly in the development and application of CED policies. Rather, by theorizing the political significance of local empowerment, postmodern scholars provided a conceptual framework that has grounded progressive support for CED.

*Postmodern micropolitics.* Postmodernism can be traced to a diverse range of sources<sup>151</sup> and the idea of postmodernism itself is contested.<sup>152</sup> In general,

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COMMUNITY CHANGE, POLICY ALERT 216 (Dec. 20, 2000), at <http://www.communitychange.org/alerts/alert216.asp> (last visited Jan. 12, 2002) (describing inclusion of New Markets Tax Credit in FY 2001 Omnibus Appropriations Package).

149. See, e.g., POSTMODERNISM & SOCIAL THEORY (Steven Seidman & David G. Wagner eds., 1992); see also FREDRIC JAMESON, POSTMODERNISM, OR, THE CULTURAL LOGIC OF LATE CAPITALISM (1991); POSTMODERNISM AND ITS DISCONTENTS (E. Ann Kaplan ed., 1988); PAULINE MARIE ROSENAU, POST-MODERNISM AND THE SOCIAL SCIENCES (1992).

150. See GARY MINDA, POSTMODERN LEGAL MOVEMENTS 224-46 (1995); Boaventura de Sousa Santos, *The Postmodern Transition: Law and Politics*, in THE FATE OF LAW 79 (Austin Sarat & Thomas Kearns eds., 1991).

151. For instance, some have argued that the roots of postmodernism can be found in critical theory. See STEVEN BEST & DOUGLAS KELLNER, POSTMODERN THEORY: CRITICAL INTERROGATIONS 215 (1991). Critical theory is most closely associated with the work of the Frankfurt School, which was founded in the 1940s by intellectual figures such as Max Horkheimer, Theodor Adorno, Herbert Marcuse, Friedrich Pollock, Franz Neumann, Leo Lowenthal, and Erich Fromm. See CRAIG CALHOUN, CRITICAL SOCIAL THEORY: CULTURE, HISTORY, AND THE CHALLENGE OF DIFFERENCE 13-14 (1995). Critical theory sought to transgress the traditional theory-practice dichotomy and posited a decidedly politicized role for theoretical endeavors, one that grounded critique in concrete historical facts and sought to expose the problems inherent in universal categories of thought. Through this “immanent critique,” the critical theorists worked to expose the historically and culturally specific contradictions of capitalist modernity and Enlightenment thought in order to “radicalize” existing categories and provide the basis for transformative social action. See *id.* at 13-26; see also MAX HORKHEIMER & THEODOR W. ADORNO, DIALECTIC OF ENLIGHTENMENT (John Cumming trans., Continuing Pub. Co. 1972) (1944). Steven Best and Douglas Kellner have argued that postmodern thought was presaged by the focus of critical theorists on critiquing Enlightenment theoretical categories, challenging the concept of foundationalism, and vindicating difference and otherness. See BEST & KELLNER, *supra*, at 215-55.

152. See DAVID HARVEY, THE CONDITION OF POSTMODERNITY: AN ENQUIRY INTO THE ORIGINS OF CULTURAL CHANGE 113-18 (1989).

postmodernism has been associated with a unique orientation toward criticism that seeks to promote diversity over universality, and expose contradictions rather than build theories.<sup>153</sup> This Part confines itself to a discussion of two related concepts that have shaped postmodern micropolitics: narrative deconstruction and power.

An important aspect of postmodern analysis has been its focus on the contingent nature of language. Beginning in the 1970s, theorists such as Jacques Derrida began to argue against the existence of an intrinsic connection between language and the objective world, suggesting instead that language derived its meaning from social context and the internal relationship among words.<sup>154</sup> This antifoundationalist position denied that there was any way to objectively ground truth, since the assertion of truth claims required the use of discursive structures that were inherently unstable and untethered to objective referents.<sup>155</sup> Based on this conception of language, Derrida employed the technique of narrative deconstruction to demonstrate that any interpretation of a text suppressed an alternative reading that tended to reinforce a hierarchy of values and subjugate marginalized viewpoints.<sup>156</sup> Derrida's deconstruction of Western philosophic and literary texts sought to expose submerged meanings in order to liberate different identities and life-styles.<sup>157</sup>

Michel Foucault, like Derrida, engaged in a comprehensive critique of Western discursive categories, focusing particular attention on how modern systems of language and knowledge constructed individual identity.<sup>158</sup> Foucault argued that modernity had given rise to a set of interlocking narratives that served to confine human experience in a way that made it amenable to bureaucratic administration and social control.<sup>159</sup> Thus, for Foucault, power

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153. See MINDA, *supra* note 150, at 228-29.

154. See JACQUES DERRIDA, *OF GRAMMATOLOGY* (Gayatri Chakravorty Spivak trans., 1976) (1967); see also MINDA, *supra* note 150, at 225 (stating that "[p]ostmoderns claim that there is no logical correspondence between language and the 'objective' world because 'language is socially and culturally constructed, it is [thus] inherently incapable of representing or corresponding to reality'") (alteration in original).

155. Derrida's rejection of a foundationalist approach to language and knowledge is associated with poststructuralism. See BEST & KELLNER, *supra* note 151, at 20-25; see also MINDA, *supra* note 150, at 334-35 n.37 (defining "poststructuralism" as a "postmodern perspective (although some postmoderns would disagree) which rejects the belief in stable structures, origins, or foundational essences for grasping the true nature of things"). The pragmatist philosopher Richard Rorty has also been identified with the antifoundationalist position. See RICHARD RORTY, *PHILOSOPHY AND THE MIRROR OF NATURE* 178 (1979); see also RICHARD RORTY, *CONTINGENCY, IRONY, AND SOLIDARITY* (1989).

156. See BEST & KELLNER, *supra* note 151, at 21; Handler, *supra* note 29, at 699.

157. See Charles Lemert, *General Social Theory, Irony, Postmodernism*, in *POSTMODERNISM AND SOCIAL THEORY*, at 37-41; MINDA, *supra* note 150, at 231.

158. See BEST & KELLNER, *supra* note 151, at 38.

159. See *id.* For example, Michel Foucault engaged in a historical examination of different types of "knowledges," analyzing the "archeology" of such discursive concepts as



and language were inextricably conjoined, since power acted on individuals through their internalization of dominant narratives.<sup>160</sup> However, Foucault's conception of power was not unidirectional—power was a field that could be modified, rather than something that could actually be possessed.<sup>161</sup> Foucault's critique of modernity, therefore, contained the seeds of political action.<sup>162</sup> Because individuals were never completely subordinated by hegemonic structures of knowledge, resistance was always possible through alternative practices.<sup>163</sup>

Derrida's conception of deconstruction and Foucault's analysis of power suggested a particular type of postmodern politics—one rooted in local, often personal, acts of resistance against the constraints of discursive structures grounded in “false” claims of truth.<sup>164</sup> Since postmodern identities were

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madness, *see* MICHEL FOUCAULT, *MADNESS AND CIVILIZATION: A HISTORY OF INSANITY IN THE AGE OF REASON* (Richard Howard trans., 1965) (1961), and science, *see* MICHEL FOUCAULT, *THE ORDER OF THINGS: AN ARCHAEOLOGY OF THE HUMAN SCIENCES* (Alan Sheridan-Smith trans., 1970) (1966), in order to demonstrate that human subjects were the product of intersecting narrative structures, not autonomous individuals. *See* BEST & KELLNER, *supra* note 151, at 41-42. Foucault also employed a genealogical approach to show how narratives operated to constrain individual identity—by, for example, “disciplining” bodies into adopting socially acceptable values such as hard work and self-sacrifice, *see* MICHEL FOUCAULT, *DISCIPLINE AND PUNISH: THE BIRTH OF THE PRISON* (Alan Sheridan trans., 1977) (1975), while also stigmatizing certain types of sexual conduct in order to control “deviant” behavior, *see* MICHEL FOUCAULT, *THE HISTORY OF SEXUALITY, VOLUME I: AN INTRODUCTION* (Robert Hurley trans., 1978) (1976).

160. *See* BEST & KELLNER, *supra* note 151, at 49-51. *See generally* MICHEL FOUCAULT, *POWER* (James D. Faubion ed., Robert Hurley et al. trans., 2000).

161. *See* MICHEL FOUCAULT, *POWER/KNOWLEDGE: SELECTED INTERVIEWS AND OTHER WRITINGS 1972-1977*, at 98 (Colin Gordon ed., Colin Gordon, Leo Marshall, John Mephan & Kate Soper trans., 1980):

[P]ower, if we do not take too distant a view of it, is not that which makes the difference between those who exclusively possess and retain it, and those who do not have it and submit to it. Power must be analysed as something which circulates, or rather as something which only functions in the form of a chain. It is never localised here or there, never in anybody's hands, never appropriated as a commodity or piece of wealth. Power is employed and exercised through a net-like organisation. And not only do individuals circulate between its threads; they are always in the position of simultaneously undergoing and exercising this power.

*Id.*; *see also* Steven L. Winter, *Cursing the Darkness*, 48 U. MIAMI L. REV. 1115, 1127 (1994) (stating that “[p]erhaps Foucault's most important contribution was his rejection of the repressive understanding of power in favor of a productive conception of power”).

162. *See* STEVEN BEST & DOUGLAS KELLNER, *THE POSTMODERN TURN* 275 (1997) (stating that the concept of power as theorized by Foucault “allow[ed] for new forms of struggle”).

163. *See* Handler, *supra* note 29, at 700.

164. *See* BEST & KELLNER, *supra* note 162, at 271 (stating that postmodernism signaled a shift from an “emphasis on transforming the public sphere and institutions of domination . . . to new emphases on culture, personal identity, and everyday life, as macropolitics were replaced by the micropolitics of local transformation and subjectivity”); CARL BOGGS, *THE END OF POLITICS* 209 (2000) (stating that in its most extreme form, “postmodernism has

formed and power was exercised through narratives that defined the individual subject, political action meant deconstructing hegemonic discourses to make space for alternative modes of being.<sup>165</sup> Marginalized individuals could be empowered by waging struggles against the totalizing systems of knowledge/power on the local level and recreating their individual identities in ways that did not conform to dominant ideologies.<sup>166</sup> Within this postmodern framework, political action could consist of personal resistance against accepted discursive structures, such as confining sexual norms.<sup>167</sup> The advent of postmodernism therefore signaled a movement toward a localized micropolitics of empowerment and away from a large-scale macropolitics of social transformation.<sup>168</sup>

*Micropolitics in the new poverty law scholarship.* During the late 1980s and early 1990s, a new current of poverty law scholarship emerged that integrated important postmodern theoretical insights. Drawing upon the work of Derrida, Foucault, and other postmodernists, poverty law scholars articulated an alternative mode of practice that privileged client participation and the expression of authentic client narratives.<sup>169</sup> Through this approach, scholars

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refocused attention, away from the macro realm (the global system, or the national state, or economy), toward a ‘micro politics’ grounded in the immediate, local, and more tangible elements of everyday life”); Handler, *supra* note 29, at 700-02; *see also* UNIVERSAL ABANDON? THE POLITICS OF POSTMODERNISM (Andrew Ross ed., 1988).

165. *See* Handler, *supra* note 29, at 701.

166. *See* BEST & KELLNER, *supra* note 151, at 54-68; *see also* Handler, *supra* note 29, at 700. *But see* RICHARD J. BERNSTEIN, THE NEW CONSTELLATION: THE ETHICAL-POLITICAL HORIZONS OF MODERNITY/POSTMODERNITY 142-66 (1993) (discussing some of the limitations of Foucault’s work as a foundation for progressive political action).

167. *See* FOUCAULT, THE HISTORY OF SEXUALITY, *supra* note 159, at 101; *see also* BEST & KELLNER, *supra* note 151, at 58 (stating that Foucault’s concept of “bio-struggle” views individuals as attempting “to break from the grip of disciplinary powers and to reinvent the body by creating new modes of desire and pleasure”); BEST & KELLNER, *supra* note 162, at 272. Along these lines, Gilles Deleuze and Félix Guattari argued for a “politics of desire” through which individuals took personal actions to liberate themselves from a repressive sexuality that reinforced passivity and perpetuated political oppression. *See* BEST & KELLNER, *supra* note 151, at 94. *But see id.* at 95, 105 (noting that Deleuze and Guattari also understood the dialectic relationship between micropolitical struggle and macropolitical action geared toward challenging government and economic institutions). *See generally* GILLES DELEUZE & FÉLIX GUATTARI, ANTI-OEDIPUS (Robert Hurley, Helen R. Lane & Mark Seem trans., 1977) (1983).

168. *See* BEST & KELLNER, *supra* note 162, at 276 (stating that there has been a movement “from a macropolitics that focused on changing the structure of the economy and state to a micropolitics that aims to overturn power and hierarchy in specific institutions and to liberate emotional, libidinal, and creative energies repressed by the reality principle of bourgeois society”).

169. *See* Ascanio Piomelli, *Appreciating Collaborative Lawyering*, 6 CLINICAL L. REV. 427, 440 (2000) (stating that the “most significant common theme” of the new poverty law scholarship “is its commitment to more active client participation in the framing and resolution of disputes” and noting that poverty law scholars have emphasized the importance

sought to incite local resistance against the subtle workings of power in order to help marginalized clients “seize, affirm, and emancipate those human possibilities denied or excluded by dominant modes of discourse.”<sup>170</sup> This led to a shift in strategic emphasis, away from the impact litigation model of institutional reform,<sup>171</sup> and toward fostering smaller-scale actions designed to empower poor clients.<sup>172</sup> This change was significant because it situated discussions about the role of lawyers in social movements and the efficacy of alternative methods of legal practice within the framework of postmodern micropolitics.<sup>173</sup>

In a sign of this postmodern shift, poverty law theorists began to apply postmodern conceptions of discourse and power<sup>174</sup> to analyze how narrative

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of “active collaboration between attorneys and clients”).

170. Anthony V. Alfieri, *The Antimonies of Poverty Law and a Theory of Dialogic Empowerment*, 16 N.Y.U. REV. L. & SOC. CHANGE 659, 692 (1987/1988).

171. See, e.g., Matthew Diller, *Poverty Lawyering in the Golden Age*, 93 MICH. L. REV. 1401, 1424-25 (1995) (reviewing MARTHA DAVIS, *BRUTAL NEED: LAWYERS AND THE WELFARE RIGHTS MOVEMENT* (1993), and noting the shift away from the lawyer-dominated “test-case” model and toward poverty law advocacy more narrowly focused on local grassroots efforts).

172. See, e.g., Anthony V. Alfieri, *Reconstructive Poverty Law Practice: Learning Lessons of Client Narrative*, 100 YALE L.J. 2107, 2133 (1991) (calling for a reconstructive poverty law practice in which the lawyer seeks to empower clients by integrating their narratives into lawyer storytelling); Simon, *supra* note 29, at 1102 (“The prescribed goal of the new scholarship is ‘empowerment’ or enhancing the autonomy of the client. This means, first, minimizing the lawyer’s own power or the social power the lawyer would otherwise tend to implement. Second, it means enlarging the client’s capacities for self-assertion.”); Paul R. Tremblay, *Rebellious Lawyering, Regnant Lawyering, and Street-Level Bureaucracy*, 43 HASTINGS L.J. 947, 951 (1992) (stating that rebellious lawyering is “lawyering that seeks to empower subordinated clients”).

173. It is important to note that, from the earliest works on poverty law, it was clear that progressive legal scholars did not seek to promote client empowerment merely as an end in itself. Instead, scholars have sought to use client-empowering strategies to achieve the ultimate goal of social transformation. See Buchanan, *supra* note 109, at 1047 (“The unstated but underlying premise of the new scholarship is that the transformation of poverty lawyering, and specifically the relationship between lawyers and clients, will serve as the political basis for larger social transformations.”). Yet the influence of postmodernism has indeed shifted the focal point of the discussion of social change away from sweeping narratives of structural transformation toward stories of localized struggles. See Cummings & Eagly, *supra* note 74, at 484-86; see also Gary L. Blasi, *What’s a Theory For? Notes on Reconstructing Poverty Law Scholarship*, 48 U. MIAMI L. REV. 1063, 1087 (1994) (“The critical postmodern scholarship too narrowly focuses on the individual lawyer/client microworld. It disclaims any ambition to look for structure or explanation above the level of local narrative.”); Simon, *supra* note 29, at 1102 (arguing that the postmodern framework equates political struggle with the achievement of “micro-victories over oppression”).

174. See Buchanan, *supra* note 109, at 1054 (discussing the “network theory of power”); Naomi R. Cahn, *Inconsistent Stories*, 81 GEO. L.J. 2475, 2507 (1993) (stating that, in postmodern theory, “[d]iscourse is the way of asserting meaning, of creating the world and all things and objects within the world”); Binny Miller, *Give Them Back Their Lives: Recognizing Client Narrative in Case Theory*, 93 MICH. L. REV. 485, 515 (1994) (describing

structures operated to silence marginalized client voices within the context of the lawyer-client relationship.<sup>175</sup> In particular, scholars focused on how poverty lawyers often deployed narratives in a way that constructed the identities of subordinated client groups as inferior, victimized, and powerless.<sup>176</sup> For example, Anthony Alfieri claimed that poverty lawyers routinely silenced poor clients by committing “interpretive violence”—that is, by accepting stories of client inferiority and subordination, and by omitting the voices of clients from the legal process.<sup>177</sup> Similarly, Lucie White critiqued the patterns of domination inherent in the lawyer-client relationship, arguing that progressive lawyers, by virtue of their facility with legal discourse, tended to reinforce poor clients’ feelings of powerlessness.<sup>178</sup> Other scholars have

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the use of narratives in critical lawyering theory); Piomelli, *supra* note 169, at 440 (“[Gerald López, Lucie White, and Anthony Alfieri] conceive of power as a shifting dynamic acted out in relationships. Because relationships, by definition, entail some degree of interdependence, ‘subordinates’ always have some ability at least tacitly to negotiate or modify the directives of their ‘superiors.’”); Louise G. Trubek, *Lawyering for Poor People: Revisionist Scholarship and Practice*, 48 U. MIAMI L. REV. 983, 987-88 (1994) (arguing that the new poverty law scholarship emphasizes the role of speech in the lawyer-client relationship); Lucie E. White, *Seeking “. . . the Faces of Otherness . . .”: A Response to Professors Sarat, Felstiner, and Cahn*, 77 CORNELL L. REV. 1499, 1501 (1992) (“According to [Foucault’s] new meta-theory, power is not a tool. Rather, like an evanescent fluid, it takes unpredictable shapes as it flows into the most subtle spaces in our interpersonal world. In this picture, we no longer see distinct ‘persons’ controlling power’s flow.”).

175. See Alfieri, *supra* note 170, at 692 (describing how lawyers control the “production of discourse” which excludes the client’s voice); Anthony V. Alfieri, *Disabled Clients, Disabling Lawyers*, 43 HASTINGS L.J. 769, 784 (1992) (stating that the discursive practices of disability law construct clients as victims); Christopher P. Gilkerson, *Poverty Law Narratives: The Critical Practice and Theory of Receiving and Translating Client Stories*, 43 HASTINGS L.J. 861, 869-73 (1992) (discussing how “universalized legal narratives” close off dialogue in a way that excludes alternative voices and perspectives and silences the stories of disempowered clients); Simon, *supra* note 29, at 1101 (stating that the new poverty law scholarship “portrays power and oppression as pervasive and diffuse in the professional interaction” and that professional practices “conspire to ‘silence’ the poor client”); Lucie E. White, *Subordination, Rhetorical Survival Skills, and Sunday Shoes: Notes on the Hearing of Mrs. G.*, 38 BUFF. L. REV. 1, 6-19 (1990) (discussing how patriarchal and racist narratives have been incorporated into law in ways that operate to devalue the speech of women of color); see also Barbara Bezdek, *Silence in the Court: Participation and Subordination of Poor Tenants’ Voices in the Legal Process*, 20 HOFSTRA L. REV. 533, 536 (1992).

176. See, e.g., Alfieri, *supra* note 172, at 2127; see also Gilkerson, *supra* note 175, at 883.

177. See Alfieri, *supra* note 172, at 2123-30.

178. See White, *supra* note 90, at 861 (“Because advocacy is a practice of speaking for—of presuming and thereby prescribing the silence of the other—the advocate, no matter how ‘rebellious’ she aspires to be, inevitably replays the drama of subordination in her own work.”); Lucie E. White, *Mobilization on the Margins of the Lawsuit: Making Space for Clients to Speak*, 16 N.Y.U. REV. L. & SOC. CHANGE 535, 542-44 (1987/1988) (stating that “the professional culture of legal training and practice leads advocates to compound the isolation and dependency that clients already feel”).

agreed with this view of client subordination, claiming that lawyers—who traditionally communicate their own understanding of client stories in a form tailored for consumption by the court—often misinterpret or exclude client narratives that could be potentially useful in the litigation or empowering for the client.<sup>179</sup>

To address the problem of client subordination, poverty law scholars proposed an alternative advocacy strategy designed to foster localized instances of client empowerment.<sup>180</sup> The keys to this practice were protecting the integrity of client stories against lawyer manipulation and ensuring the expression of marginalized client voices.<sup>181</sup> For instance, Alfieri urged advocates to develop “oppositional discourses” about the poor<sup>182</sup> and to engage in a process of “dialogic empowerment” that would re-value traditionally excluded client narratives of agency and struggle.<sup>183</sup> Similarly, Gerald López proposed a new form of “rebellious” lawyering that rejected the conventional lawyer-client hierarchy and sought to empower local community members to develop their own capacity to challenge injustice.<sup>184</sup> Accepting the postmodern conception of power,<sup>185</sup> López argued that rebellious practice should not privilege lawyer narratives over those of their clients.<sup>186</sup> Rather, poverty

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179. See Gilkerson, *supra* note 175, at 911-14 (discussing the “traditional practice” of lawyers squeezing client narratives into pre-packaged legal stories); see also Richard D. Marsico, *Working for Social Change and Preserving Client Autonomy: Is There a Role for “Facilitative” Lawyering?*, 1 CLINICAL L. REV. 639, 646 (1995) (describing the “paradox of social change lawyering,” in which lawyers risk subordinating clients by forcing them to rely on the lawyers’ expertise in a way that reproduces client dependency).

180. See, e.g., Alfieri, *supra* note 170, at 665 (stating that “empowering the poor should be the political object of poverty law”).

181. See, e.g., Clark D. Cunningham, *The Lawyer as Translator, Representation as Text: Towards an Ethnography of Legal Discourse*, 77 CORNELL L. REV. 1298 (1992); Gilkerson, *supra* note 175, at 915; Alex J. Hurder, *Negotiating the Lawyer-Client Relationship: A Search for Equality and Collaboration*, 44 BUFF. L. REV. 71, 79 (1996); Miller, *supra* note 174, at 488; see also Linda S. Durston & Linda G. Mills, *Toward a New Dynamic in Poverty Client Empowerment: The Rhetoric, Politics, and Therapeutics of Opening Statements in Social Security Disability Hearings*, 8 YALE J.L. & FEMINISM 119 (1996); Michelle S. Jacobs, *People from the Footnotes: The Missing Element in Client-Centered Counseling*, 27 GOLDEN GATE U. L. REV. 345 (1997).

182. See Alfieri, *supra* note 170, at 682.

183. See *id.* at 695-711. Particularly, Alfieri stressed the need for a “transformational dialogue” between the lawyer and client, among clients themselves, and between clients and their communities, *id.* at 698-711, in order to mobilize “independent, locally-based client/community empowerment groups,” *id.* at 706.

184. See GERALD P. LÓPEZ, *REBELLIOUS LAWYERING: ONE CHICANO’S VISION OF PROGRESSIVE LAW PRACTICE* 30-38 (1992).

185. See *id.* at 41 (“Power necessarily runs in all directions within relationships. No person, no group is ever *absolutely* powerless in any relationship, not battered women and not low-income people of color . . .”).

186. See *id.* at 47-53 (arguing that lawyers and clients each possess important problem-solving skills and practical knowledge that must be used in collaboration to address poverty

lawyers should integrate clients into social change processes by valuing their stories and educating them to use their own problem-solving—or “lay lawyering”—skills to redress social problems.<sup>187</sup>

White’s approach to poverty law advocacy promoted local empowerment by liberating clients from stifling lawyer-imposed narratives and allowing them to “name the world” for themselves.<sup>188</sup> White argued for a model of “third-dimensional lawyering” in which lawyer-activists used educational techniques to stimulate a critical consciousness in subordinated groups through a process of mutual dialogue and exchange.<sup>189</sup> To implement this alternative model, White suggested that poverty lawyers loosen their affinity for conventional legal practice and create “parallel spaces” outside the boundaries of traditional litigation that allowed clients to engage in “reflective conversation and strategic action.”<sup>190</sup> Through this process of critical dialogue and self-definition, White claimed that clients could begin to engage in acts of local resistance and come to think of themselves as autonomous political actors.<sup>191</sup> Thus, the

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issues).

187. *See id.* at 70 (stating that rebellious lawyering aims to educate “people subordinated by political and social life [so that they] can learn to recognize and value and extend their own problem-solving know-how, [and therefore] gain confidence in their ability to handle situations that they would otherwise experience as utterly foreign and unmanageable”). The rebellious idea of lawyering emphasizes teaching client self-help and facilitating client empowerment as the touchstones of effective poverty law practice. *See id.* at 74-82; *see also* Angelo N. Ancheta, *Community Lawyering*, 1 *ASIAN L.J.* 189 (1994) (reviewing LÓPEZ, *supra* note 184); Richard F. Klawiter, *La Tierra Es Nuestra! The Campesino Struggle in El Salvador and a Vision of Community-Based Lawyering*, 42 *STAN. L. REV.* 1625 (1990).

188. *See* White, *supra* note 90, at 862; *see also* Lois H. Johnson, *The New Public Interest Law: From Old Theories to a New Agenda*, 1 *B.U. PUB. INT. L.J.* 169, 184-85 (1991) (describing the role of the lawyer envisioned by White as “facilitat[ing] individual and community empowerment by adopting the role of listener, organizer and helper”).

189. *See* Lucie E. White, *To Learn and Teach: Lessons from Driefontein on Lawyering and Power*, 1988 *WIS. L. REV.* 699, 760-66 (1988) [hereinafter White, *To Learn and Teach*]; *see also* Lucie E. White, *Collaborative Lawyering in the Field? On Mapping the Paths from Rhetoric to Practice*, 1 *CLINICAL L. REV.* 157, 157 (1994) (stating that “third[-]dimensional” lawyering “seeks to enable poor people to see themselves and their social situation in ways that enhance their world-changing powers”). Third-dimensional lawyering, according to White, requires that lawyers and clients engage in an ongoing educational dialogue in which the clients are encouraged to reflect upon their lives, collectively design actions to respond to their problems, and then continue to reflect upon their changed conditions. *See* White, *To Learn and Teach*, *supra*, at 761.

190. White, *supra* note 178, at 546; *see also id.* at 550-54 (advocating that lawyers use such devices as “speak-outs” and street theater to elicit client dialogue); White, *supra* note 90, at 887 (suggesting that “we might look around us for spaces where poor people can talk among themselves about what they want to do”).

191. *See* White, *To Learn and Teach*, *supra* note 189, at 763 (stating that progressive lawyers must work with subordinated groups so that they “learn how to design context-specific acts of public resistance, which work, not by overpowering the oppressor, but by revealing the wrongness and vulnerability of its positions to itself and to a wider public”).

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paradigmatic heroine of White's scholarship was Mrs. G, whose unexpected decision to ignore her legal aid lawyer's advice and speak out during her welfare hearing constituted a bold act of individual self-realization and political will.<sup>192</sup> The story of Mrs. G emerged as a symbol of the new poverty law scholarship's emphasis on the micro-world of client empowerment—an admonitory tale against lawyer-centered advocacy strategies that ignored the political significance of client narrative.

C. *Resolution: The Architecture of Market-Based CED*

The genealogy of market-based CED reveals its distinct theoretical roots. Forged at the intersection of neoliberal economics and postmodern micropolitics, market-based CED rose to prominence in a political and intellectual environment hostile to the social welfare programs and large-scale reform strategies that formed the foundations for earlier mass-based movements for economic justice. By the mid-1990s, a strong consensus had formed around market-based CED precisely because of its broad ideological appeal—resonating both with conservative proponents of free market principles and progressive advocates of localized empowerment strategies.<sup>193</sup> The model

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For White, this conception of client empowerment was directly based on Foucault's notion of power.

Foucault's picture of power disrupts . . . [the] closed circle of domination. By showing that the dominators do not "possess" power, his picture makes possible a politics of resistance. It opens up space for a self-directed, democratic politics among subordinated groups, a politics that is neither vanguard-driven nor co-opted, as the politics of the colonized subject inevitably is . . . . The Foucaultian picture of power makes insurgent politics interesting again; it brings possibility back into focus, even in apparently quiescent times when resistance is visible only in the microdynamics of everyday life.

White, *supra* note 174, at 1504.

192. See White, *supra* note 175, at 31. According to White, the significance of Mrs. G's act laid in the fact that:

[s]he claimed a position of equality in the speech community—an equal power to take part in the *making* of language, the making of shared categories, norms, and institutions—as she spoke through that language about her needs . . . . Although dominant groups may control *social institutions* that regulate these languages, those groups cannot control the *capacity* of subordinated peoples to speak. Thus, women have evaded complete domination through their *practice* of speaking, like Mrs. G. spoke at her hearing, from their own institutions and their own experience.

*Id.* at 50.

193. Of course, CED also embraces goals that extend beyond the narrow one of expanding businesses in low-income neighborhoods. Five "widely shared objectives" of "community-based economic development" include:

(1) the development of business and economic institutions which *increase the income* of community residents; (2) provisions of *more and better employment opportunities* both inside and outside the community; (3) *participation in the ownership and management* of such firms and institutions by the residents of communities in which they are located; (4) the development of more *skilled human and technical resources* than are presently available in such communities; and (5) the development of economic, social, and political institutions which the community residents can view with pride and which will be *responsive* to their

of market-based CED that has emerged reflects its diverse ideological lineage, integrating the principles of market expansion, localism, and community empowerment into a conceptual framework for redressing poverty.

1. *The role of the market.*

The current CED paradigm is defined by an adherence to market principles and a belief in the efficacy of market-based antipoverty remedies.<sup>194</sup> It rests on the premise that the market does not function properly in low-income communities and that creative efforts to build market capacity are necessary to stimulate flagging local economies. The main programmatic goal, advanced primarily by CDCs,<sup>195</sup> has been to restructure market incentives to leverage private investment for the development of community-based businesses, affordable housing, and financial institutions.<sup>196</sup>

A central component of market-based CED strategies has been the promotion of local business development as a vehicle for creating jobs for low-income workers.<sup>197</sup> Toward this end, community organizations have acted as financing intermediaries for neighborhood businesses, provided technical assistance to community entrepreneurs, and developed local real estate projects such as shopping centers, supermarkets, and industrial business parks.<sup>198</sup> A significant portion of the funding for these efforts has come through federal, state, and local economic development agencies, supplemented by foundation

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collective wishes.

NEDLC, A LAWYER'S MANUAL, *supra* note 47, at 8; *see also* Elena Popp & Francisca Gonzalez Baxa, *Creating Viable Neighborhood Community Economies*, 33 CLEARINGHOUSE REV. 668, 669 (2000) (providing a similar list of core principles of CED strategy).

194. *See* Stoecker, *supra* note 31, at 4 (“[T]he CDC model is [characterized by] an acceptance of supply-side economic models and free market philosophy.”).

195. *See* Owens, *supra* note 66 (stating that “[n]ationally, approximately 1,872 urban CDCs exist,” and that “[a]s of 1997, urban CDCs have built or renovated 435,000 units of housing, both rental and owner-occupied; they have developed approximately 48 million square feet of commercial and industrial space; and they have created 113,000 jobs”).

196. *See* McFarlane, *supra* note 7, at 307-08 (stating that the goal of CED is to “convert the target neighborhoods into full-service communities that meet both housing needs and commercial needs”).

197. *See* NEDLC, A LAWYER'S MANUAL, *supra* note 47, at 24 (“The CDC's prime goal is to alleviate poverty by creating a sound economic and social base for the low-income community. As the means of securing this goal, the CDC is necessarily involved in a program of community business development.”); Schill, *supra* note 14, at 768. In addition to business development, CDCs engage in a range of other activities. *See generally* TWENTIETH CENTURY FUND TASK FORCE ON COMMUNITY DEVELOPMENT CORPORATIONS, CDCS: NEW HOPE FOR THE INNER CITY (1971); AVIS C. VIDAL, REBUILDING COMMUNITIES: A NATIONAL STUDY OF COMMUNITY DEVELOPMENT CORPORATIONS (1992).

198. *See* NEAL R. PEIRCE & CAROL F. STEINBACH, ENTERPRISING COMMUNITIES: COMMUNITY-BASED DEVELOPMENT IN AMERICA, 1990, at 18 (1990); Schill, *supra* note 14, at 769-71.



grants, private investments, and commercial loans.<sup>199</sup> Community groups have also made efforts to stimulate economic growth through microenterprise and nonprofit business ventures. Thus, many organizations have provided technical assistance and microloans to very small businesses owned by low-income community residents.<sup>200</sup> In addition, some nonprofit groups have sought to employ low-income people directly by starting their own business ventures, often termed social enterprises.<sup>201</sup> CED lawyers have played a variety of roles in these business development projects, establishing appropriate legal structures, reviewing contracts and financial instruments, evaluating the tax consequences of development projects, and handling real estate matters.<sup>202</sup>

Affordable housing development constitutes another important programmatic element of the market-based CED model. The Low-Income Housing Tax Credit (LIHTC) has, perhaps more than any other program, exemplified the market-based approach to CED. The LIHTC, enacted as part of the Tax Reform Act of 1986,<sup>203</sup> was created as a financial incentive to boost private sector investment in affordable housing.<sup>204</sup> Its enactment underscored the move away from the concept of housing as a public good and toward

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199. See Schill, *supra* note 14, at 769-71 (describing the funding sources for a variety of different community development initiatives).

200. See, e.g., JONES, A LEGAL GUIDE TO MICROENTERPRISE DEVELOPMENT, *supra* note 15; see also Stephen Gregory, *Incubator Focuses on Low-Income Areas*, L.A. TIMES, July 19, 2000, at C7 (describing small business incubator established by CHARO Community Development Corporation in Los Angeles); Hugo Martin, *A Haven for Vendors*, L.A. TIMES, Nov. 22, 1999, at B1 (describing the construction of Mercado La Paloma, an indoor bazaar developed by the Esperanza Community Housing Corporation, where Latino vendors can rent stalls to operate their small businesses).

201. See THE ROBERTS FOUNDATION, NEW SOCIAL ENTREPRENEURS: THE SUCCESS, CHALLENGE AND LESSONS OF NON-PROFIT ENTERPRISE CREATION (Jed Emerson & Fay Twersky eds., 1996); Jed Emerson, *Moving Toward the Market: Nonprofit Enterprise in a Changing World*, 89 SHELTERFORCE ONLINE, Sept.-Oct. 1996, at <http://www.nhi.org/online/issues/89/towardsmarket.html>; see also THE ROCKEFELLER FOUNDATION, A DOUBLE 'BOTTOM LINE': LESSONS ON SOCIAL-PURPOSE ENTERPRISE FROM THE VENTURE FUND INITIATIVE (1999), available at <http://www.rockfound.org/Documents/199/vfi.pdf>; Colin Crawford, *Networks Link Entrepreneurs and Nonprofits*, WALL ST. J., Mar. 29, 2000, at CA1.

202. See THE ROBERTS FOUNDATION, NEW SOCIAL ENTREPRENEURS, *supra* note 201, at 323-30 (reviewing tax and other legal issues that arise in the context of nonprofit business ventures); Glick & Rossman, *supra* note 14, at 119-21 (outlining scope of CED lawyer's representation of CDCs); Jones, *Small Business and Community Economic Development*, *supra* note 15, at 209-10 (describing legal needs of microentrepreneurs); Southworth, *supra* note 14, at 1134-41 (providing an overview of the range of legal services performed by attorneys representing community organizations and minority entrepreneurs).

203. See Tax Reform Act of 1986, Pub. L. No. 99-514, 100 Stat. 2085. The LIHTC was granted permanency under the Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, 107 Stat. 312.

204. See Tracy A. Kaye, *Sheltering Social Policy in the Tax Code: The Low-Income Housing Credit*, 38 VILL. L. REV. 871, 877 (1993).

increased reliance on the private market to supply housing to the poor.<sup>205</sup> By establishing a process for syndicating tax credits to private investors, the LIHTC has provided a substantial subsidy to affordable housing development since its introduction.<sup>206</sup> Under the tax credit program, the construction or rehabilitation of eligible residential rental properties may qualify for the LIHTC if a minimum number of rent-restricted units for low-income tenants is set aside.<sup>207</sup> Although estimates of the production effect of the LIHTC vary,<sup>208</sup> it is clear that the credit has spurred the construction of a significant number of low-income units; the cost-effectiveness of the program, however, remains the subject of debate.<sup>209</sup> Given the technical complexity of LIHTC deals, CED lawyers have been critical to their implementation, assisting developers to apply for tax credits, form limited partnerships, draft tax opinions, and review financing and real estate documents.<sup>210</sup>

Consistent with the goal of market expansion, CED has also focused on increasing access to financial institutions in low-income communities to augment the flow of capital resources to areas that have suffered disinvestment.<sup>211</sup> One of the main efforts in this regard has been to develop

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205. See Cohen, *supra* note 16, at 537.

206. See Charles J. Orlebeke, *The Evolution of Low-Income Housing Policy, 1949-1999*, 11 HOUSING POL'Y DEBATE 489, 511 (2000).

207. See I.R.C. § 42(g) (2001). To qualify for tax credits, "properties must rent at least 20 percent of their units to households earning 50 percent of the area median income or less, or at least 40 percent of their units to households earning less than 60 percent of median income." Orlebeke, *supra* note 206, at 511. The development of such projects is typically done through the creation of a limited partnership—frequently with a nonprofit general partner—which allocates the credits to the limited partner investor in exchange for its capital contribution. See Kaye, *supra* note 204, at 886. However, in many states, limited liability companies are replacing limited partnerships as the structural vehicle of choice for tax credit syndications.

208. See Cohen, *supra* note 16, at 550 (stating that "[t]o date, 842,438 units have been constructed or rehabilitated using low-income housing tax credits nationwide"); Orlebeke, *supra* note 206, at 512 (citing different production estimates ranging from 550,000 to 600,000 units during the first ten years of the LIHTC to 1,000,000 units through 1998).

209. See Cohen, *supra* note 16, at 550 (stating that the current data on LIHTC production "calls into question the cost-effectiveness" of the program); Orlebeke, *supra* note 206, at 513-14 (noting that critics of the program have pointed to the high transaction costs created by its complexity and the high returns to tax credit investors); see also Janet Stearns, *The Low-Income Housing Tax Credit: A Poor Solution to the Housing Crisis*, 6 YALE L. & POL'Y REV. 203 (1988).

210. For an overview of the legal issues presented by LIHTC deals, see Lance Bocarsly, Eugene Cowan & Eva Garrett, *An Overview of the Low-Income Housing Tax Credit Program*, in THE CUTTING EDGE OF AFFORDABLE HOUSING SOLUTIONS AND COMMUNITY DEVELOPMENT INITIATIVES (2000) (on file with author) (A.B.A. Forum on Affordable Housing and Community Development Law, 9th Annual Conference on Affordable Housing and Community Development Law).

211. See Heisen, *supra* note 17, at 343.

banking alternatives in economically distressed neighborhoods.<sup>212</sup> Most prominently, the Community Development Financial Institutions Act (CDFI Act) of 1994 created a fund to invest in community development financial institutions (CDFIs),<sup>213</sup> which are community-based organizations dedicated to investing, lending, and providing basic banking services in support of community development efforts.<sup>214</sup> The CDFI Act is structured to increase direct federal investment and technical assistance to CDFIs, and to create incentives for private banks to invest in CDFIs.<sup>215</sup> The CDFI program has stimulated the establishment of community development banks, credit unions, community development loan funds, venture capital funds, and micro-enterprise loan funds that serve low-income communities.<sup>216</sup> These CDFIs target investments to support job creation projects, affordable housing, and community infrastructure development.<sup>217</sup> They offer financial products such as checking and savings accounts, mortgages, small business loans, individual development accounts, and equity investments,<sup>218</sup> while often providing other community services, such as job training courses and homeownership programs.<sup>219</sup> By providing access to capital markets, CDFIs have complemented efforts to increase business development and expand affordable housing in low-income communities.

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212. The Community Reinvestment Act (CRA) reflects another effort to harness market forces to redevelop low-income neighborhoods, see Nellie R. Santiago, Thomas T. Holyoke & Ross D. Levi, *Turning David and Goliath into the Odd Couple: How the New Community Reinvestment Act Promotes Community Development Financial Institutions*, 6 J.L. & POL'Y 571, 573 (1998), although its enforcement scheme contemplates community organizing and political pressure as integral to making recalcitrant banks comply with the statute's community lending goals. See generally 12 U.S.C. §§ 2901-2907 (2001). The CRA and Community Development Financial Institutions (CDFI) programs may be complementary; some commentators have suggested that mainstream financial institutions can gain CRA credit by investing in CDFIs. See Santiago et al., *supra*, at 611-12. For a discussion of the CRA, see also E. L. Baldinucci, *The Community Reinvestment Act: New Standards Provide New Hope*, 23 FORDHAM URB. L.J. 831 (1996); Richard D. Marsico, *A Guide to Enforcing the Community Reinvestment Act*, 20 FORDHAM URB. L.J. 165 (1993); Richard D. Marsico, *The New Community Reinvestment Act Regulations: An Attempt to Implement Performance-Based Standards*, 30 CLEARINGHOUSE REV. 1021 (1996); Gary Swidler, *Making the Community Reinvestment Act Work*, 69 N.Y.U. L. REV. 387 (1994).

213. See Community Development Financial Institutions Act of 1994, Pub. L. No. 103-325, §§ 101-121, 108 Stat. 2160 (codified at 12 U.S.C. §§ 4701-4718 (2001)).

214. See Heisen, *supra* note 17, at 342-45; Santiago et al., *supra* note 212, at 595-98.

215. See Heisen, *supra* note 17, at 344-48.

216. See *id.* at 348-53; Santiago et al., *supra* note 212, at 602-09.

217. See Heisen, *supra* note 17, at 346.

218. See *id.* at 348-53; see also Lento, *supra* note 17, at 776-83.

219. See Heisen, *supra* note 17, at 350 (describing the job training program of South Shore Bank's affiliate); Lento, *supra* note 17, at 780 (noting that community development bank affiliates may engage in homeownership and leadership training programs).

2. *The ideal of localism.*

Market-based CED is also rooted in the ideal of localism. The postmodern emphasis on the microcosm of local community action has given credence to the idea—quite prevalent in the CED literature—that the struggle against injustice must be waged at the local level. Against this backdrop, CED proponents have generally accepted the local community as the appropriate locus of targeted economic revitalization activities, while portraying CED as a strategy uniquely capable of redressing local poverty.

Different justifications have been offered in support of localized CED efforts. Some have argued that the local focus is a strategic necessity—an effort to maximize the impact of advocacy undertaken with limited financial resources.<sup>220</sup> Others have suggested that there is a stronger imperative for localism, one rooted in a model of “bottom-up” social change that relies on the active participation of community residents to produce meaningful, long-term results.<sup>221</sup> In either case, there has been a powerful tendency to treat the local neighborhood as a discrete economic unit in need of rebuilding.<sup>222</sup> Commentators have generally presumed the fixity of local neighborhood boundaries, suggesting that the primary objective of CED should be the creation of new investment, jobs, and development projects within defined geographic spheres.<sup>223</sup> CED has therefore evolved as a “place-based” strategy that attempts to enlist the support of community residents to effect changes in their immediate surroundings.<sup>224</sup>

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220. See Smock, *supra* note 126 (stating that the “combined realities of limited resources and multi-dimensional urban problems mean that local targeting may be the only way to achieve even minimal success”).

221. See Stoecker, *supra* note 31 (“The bottom-up approach is supposed to help the community determine how to conduct redevelopment and produce more homes and businesses owned by community members.”); see also WILLIAM W. BIDDLE & LOUREIDE J. BIDDLE, *THE COMMUNITY DEVELOPMENT PROCESS: THE REDISCOVERY OF LOCAL INITIATIVE* (1965); DAVID P. ROSS & PETER J. USHER, *FROM THE ROOTS UP: ECONOMIC DEVELOPMENT AS IF COMMUNITY MATTERED* (1986).

222. See McFarlane, *supra* note 7, at 307.

223. See EDWARD J. BLAKELY, *PLANNING LOCAL ECONOMIC DEVELOPMENT: THEORY AND PRACTICE* 58 (1989) (characterizing CED as a “process by which local government and/or community-based groups manage their existing resources and enter into new partnership arrangements with the private sector, or with each other, to create new jobs and stimulate economic activity in a well-defined economic zone”); see also McFarlane, *supra* note 7, at 307 (“Community economic development . . . treats the neighborhood as a discrete and insular economic unit. The focus becomes one of encouraging the creation of new business and the relocation of existing business in the targeted neighborhood in order to improve the economic conditions for residents of that area.”).

224. See McFarlane, *supra* note 7, at 304; see also VIDAL, *supra* note 197, at 38 (noting that “[m]ost CDCs are organized around geographically defined communities, i.e., neighborhoods or clusters of neighborhoods”). The Empowerment Zone and related incentive zone programs are the policy manifestations of this emphasis on local economic

Analyses of CED have concentrated on demonstrating how community-based groups have worked to facilitate the expansion of economic activities within specific low-income neighborhoods. CED has thus been promoted as a method of counteracting the deterioration of communities through the development of community-oriented enterprises that increase local economic viability and neighborhood autonomy.<sup>225</sup> In particular, CDCs have been presented as catalysts for local economic growth, working to correct market failures by channeling resources into areas with high concentrations of poverty.<sup>226</sup> In the legal services context, CED has been offered as a way of supporting local development through the representation of CDCs on real estate, tax, corporate, and regulatory matters.<sup>227</sup> By focusing on neighborhood-level interventions, market-based CED has demonstrated its strategic commitment to local action and underscored the primacy of local communities as sites for social change.

### 3. *Community empowerment.*

Since the establishment of community action agencies in the 1960s to facilitate the participation of neighborhood residents in the implementation of antipoverty programs, the idea of community empowerment has been a defining goal of CED efforts.<sup>228</sup> The postmodern emphasis on local empowerment reinforced its significance as a CED objective. Thus, one of the most frequently cited justifications for CED as a social change strategy is its capacity to “empower poor people to work for their own economic and social

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action. See McFarlane, *supra* note 7, at 296.

225. See Severyn T. Bruyn, *Beyond the Market and the State*, in *BEYOND THE MARKET AND THE STATE: NEW DIRECTIONS IN COMMUNITY DEVELOPMENT* 3, 8 (Severyn T. Bruyn & James Meehan eds., 1987).

226. PEIRCE & STEINBACH, *supra* note 65, at 13 (“All CDCs focus their activities in a clearly defined geographic area encompassing a high concentration of low-income people.”); PETERMAN, *supra* note 47, at 47 (“CDCs are locally based quasi-capitalist organizations that attempt to stimulate and carry out community development efforts in neglected communities where the private market has failed to do so.”). The Dudley Street Neighborhood Initiative, in Roxbury, Massachusetts, is frequently cited as a testament to the regenerative power of place-based development projects in low-income areas. See, e.g., McFarlane, *supra* note 7, at 306; see also Janice Tulloss, *Transforming Urban Regimes, A Grassroots Approach to Comprehensive Community Development: The Dudley Street Neighborhood Initiative* (1998) (Comm-Org: The Online Conference on Community Organizing and Development), at <http://comm-org.utoledo.edu/papers98/tulloss.htm>.

227. See Glick & Rossman, *supra* note 14, at 117-21.

228. See HALPERN, *supra* note 61, at 108; PETERMAN, *supra* note 47, at 39; see also Stoecker, *supra* note 31, at 4 (describing one ideal of CED as working “to empower whole communities through comprehensive treatment of social and physical conditions, measuring success in terms of physical redevelopment and community regeneration, participation, and empowerment.”).

betterment.”<sup>229</sup>

The concept of community empowerment is linked to the idea of local control.<sup>230</sup> CED scholars have suggested that if neighborhood residents are incorporated as active participants in the reconstruction of their local economies, they will be empowered through the process.<sup>231</sup> In particular, CED proponents have argued that communities build power by exerting ongoing influence over local decision-making structures in a way that ensures that development efforts are responsive to community needs.<sup>232</sup> CED work has therefore been focused on establishing mechanisms for ensuring that ultimate control of neighborhood-based initiatives resides in low-income community members.<sup>233</sup> Generally, the establishment of CDCs accountable to residents has been viewed as the main vehicle for achieving community empowerment.<sup>234</sup> Community business ownership<sup>235</sup> and community involvement in redevelopment efforts have also been cited as effective mechanisms for promoting empowerment.<sup>236</sup>

What emerges from the CED literature is a picture of empowerment as a complex process that occurs on a variety of different planes—political, social, and psychological.<sup>237</sup> Empowerment is described as both the expression of

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229. PEIRCE & STEINBACH, *supra* note 65, at 16; *see also* Shah, *supra* note 2, at 218-20.

230. William Peterman observes that the linkage of empowerment and local control only occurs among progressive advocates of CED. He argues that empowerment is actually an amorphous term that has different meanings depending on one's political orientation: For conservatives it means "ownership," for liberals it means "access to government," and for progressives it means "community control." PETERMAN, *supra* note 47, at 37.

231. *See* HERBERT J. RUBIN, RENEWING HOPE WITHIN NEIGHBORHOODS OF DESPAIR: THE COMMUNITY-BASED DEVELOPMENT MODEL 140 (2000).

232. For instance, it has been suggested that local control allows community residents to create stronger mechanisms of accountability that raise the likelihood that CED projects will allocate the benefits of increased economic activity to the neediest constituencies. *See* Quinones, *Redevelopment Redefined*, *supra* note 14, at 759-61. Scholars have outlined additional benefits of local control, noting that locally controlled institutions can protect communities from the speculative excesses of the capitalist market, democratize the decision-making structures of corporate governance, and channel funds to support local economic priorities. *See* Bruyn, *supra* note 225, at 8-13.

233. *See* NEDLC, A LAWYER'S MANUAL, *supra* note 47, at 24 ("A basic premise of the CDC concept is that ultimate control of the CDC's program must reside within the low-income community being served by the CDC.").

234. *See* PETERMAN, *supra* note 47, at 47 ("The argument made in support of CDCs is that they promote community empowerment through the successful application of business skills tempered with social awareness.").

235. *See, e.g.,* Scott L. Cummings, *Developing Cooperatives as a Job Creation Strategy for Low-Income Workers*, 25 N.Y.U. REV. L. & SOC. CHANGE 181, 189-90 (1999).

236. *See* Quinones, *Redevelopment Redefined*, *supra* note 14, at 759.

237. *See* JOHN FRIEDMANN, EMPOWERMENT: THE POLITICS OF ALTERNATIVE DEVELOPMENT 33 (1992).

individual capacity<sup>238</sup> and group political strength.<sup>239</sup> Often, empowerment occurs on the individual and the group level simultaneously, in a mutually reinforcing cycle.<sup>240</sup> Some have described empowerment in process-oriented terms, suggesting that CED efforts facilitate self-help strategies that teach community members how to handle their own problems more effectively.<sup>241</sup> Others have characterized empowerment as tethered to the results of community action, claiming that empowerment occurs when community members see their projects come to fruition.<sup>242</sup> What these descriptions have in common is an understanding of empowerment as a measurable good: Empowerment is viewed as a discernable transformation—a quantum of influence that can be cultivated by active participation in local community life.

In the legal scholarship, CED lawyers have been portrayed as particularly effective in fostering community empowerment.<sup>243</sup> For instance, it has been argued that CED lawyers can empower their clients both by demystifying the law and by ensuring that the development process is successfully implemented.<sup>244</sup> Some feminists have claimed that bottom-up CED strategies, such as microenterprise development, can lead to women's empowerment by creating "new patterns of social interaction" that promote feelings of enhanced social and political capacity.<sup>245</sup> It has also been suggested that lawyers can augment community power by helping clients to structure organizations that integrate mechanisms of local control, such as CDFIs.<sup>246</sup> Others have argued

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238. See Wilson, *supra* note 4, at 622 (stating that empowerment is the "self-realisation of each individual's own well-being and potential for changing themselves, their families and their community").

239. See FRIEDMANN, *supra* note 237, at 33; see also Anita Hodgkiss, *Petitioning and the Empowerment Theory of Practice*, 96 YALE L.J. 569, 581 (1987) (defining "empowerment" as "a process by which individuals develop a sense of personal responsibility for the fundamental decisions that most affect their lives, and results ultimately in the democratization of economic and political decision making").

240. See RUBIN, *supra* note 231, at 151-53.

241. See James A. Christenson, *Three Themes of Community Development*, in COMMUNITY DEVELOPMENT IN AMERICA, *supra* note 61, at 38, 43 (stating that, during the process of community development, community members "may achieve a task or goal, but it is incidental to the long-range implication of teaching people how to improve their situation"); see also BERNDT, *supra* note 36, at 35 ("Regardless of what choice is made, of major importance to the CDC is the fact that the community, and not people outside the community, makes the final decision.").

242. See Sisak, *supra* note 14, at 888 (stating that community empowerment "assumes the form of institutional stability—health care facilities, recreational centers, tenant-owned housing").

243. See *id.* at 887-88; see also Judith E. Koons, *Fair Housing and Community Empowerment: Where the Roof Meets Redemption*, 4 GEO. J. ON FIGHTING POVERTY 75, 81 (1996).

244. See Sisak, *supra* note 14, at 887.

245. See White, *supra* note 14, at 330.

246. See Richard D. Marsico, *Fighting Poverty Through Community Empowerment*

that CED lawyers may promote empowerment by collaborating with client groups to address the problems of poverty “in creative, power-sensitive, and politically engaged ways.”<sup>247</sup>

Scholars have also claimed that the nature of the lawyer-client relationship in the CED context promotes empowerment by minimizing the potential for lawyer domination.<sup>248</sup> Since the representation of organizational clients requires that lawyers plan and structure future client projects as well as properly maintain existing programs, CED lawyers tend to adhere to client objectives and defer to client expertise.<sup>249</sup> As a result, client autonomy is respected in the CED context to a greater extent than in other advocacy settings, thereby enhancing the potential for client-empowering experiences to occur.

Part I has traced the historical development of CED as a market-based strategy for local empowerment. As it has shown, CED has evolved as a contested concept—a set of ideas and practices that have been claimed by different groups and promoted for different ends. In particular, CED has emerged out of a long-standing tension between market-based and organizing-centered antipoverty strategies, and has been shaped by trends of political conservatism and intellectual postmodernism. Yet, despite its current political appeal and widespread application, there has been a dearth of critical analysis

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*and Economic Development: The Role of the Community Reinvestment and Home Mortgage Disclosure Acts*, 12 N.Y.L. SCH. J. HUM. RTS. 281, 282 (1995) (arguing for the use of the Community Reinvestment Act to support and create CDFIs, “which are community-controlled financial intermediaries explicitly designed to eliminate poverty and meet community credit needs”); *see also* Anthony D. Taibi, *Banking, Finance, and Community Economic Empowerment: Structural Economic Theory, Procedural Civil Rights, and Substantive Racial Justice*, 107 HARV. L. REV. 1465, 1520-28 (1994) (arguing for increased support for CDFIs as part of a community-empowerment approach to community development).

247. Lucie E. White, “Democracy” in *Development Practice: Essays on a Fugitive Theme*, 64 TENN. L. REV. 1073, 1097.

248. *See* Southworth, *supra* note 14, at 1154-63.

249. According to Ann Southworth:

There are several reasons to suppose that planners might more readily defer to their clients’ objectives than litigators do: (1) planning skills may be less remote from clients’ own knowledge and experience and more easily evaluated by clients; (2) planning work by its very nature requires reference to client objectives, and planners have fewer opportunities and incentives to substitute their own goals; (3) the clients that consume planning services often are relatively sophisticated consumers of legal services; (4) ethical rules governing planning work for organizations are sometimes easier to apply than those governing impact litigation; and (5) prevailing practice norms among lawyers who perform planning services encourage deference to clients.

*Id.* at 1154-55; *see also* NEDLC, A LAWYER’S MANUAL, *supra* note 47, at 19 (noting that in the context of CED, the lawyer’s role takes on a diminished importance since “lawyers are necessary, but not sufficient”); Sisak, *supra* note 14, at 885 (noting that in the CED context, the community organization drives the lawyering by defining goals and identifying broad approaches).



about the efficacy of market-based CED as a social change tool. A careful evaluation of the market model is therefore necessary to lay the foundation for a renewed dialogue on the direction of CED practice.

## II. A CRITIQUE OF MARKET-BASED CED

The emergent consensus in favor of market-based CED, while profoundly influencing the direction of antipoverty advocacy, has also galvanized an indigenous critique of social change practice. At the grassroots level, dissatisfaction with the current orientation of CED work has begun to percolate, as the market consensus has shown signs of fissure. Many community activists have recoiled from CED's lack of political engagement and have started to register their dissent from the chorus of market-based CED boosterism, which has promoted the value of market integration without questioning the fairness of existing institutional arrangements. Progressive scholars have initiated a critical exchange over the efficacy of place-based CED strategies focusing on market expansion. Part II elaborates on this critical perspective in order to demonstrate the limitations of the current market approach and to highlight the need for an alternative CED grounded in grassroots politics and tethered to a larger movement for economic justice.

### A. *Market-Based CED Does Not Adequately Redress Poverty*

The argument in favor of market-based CED has been premised on the assumption that local economic growth, by itself, diminishes poverty.<sup>250</sup> However, the literature analyzing the efficacy of market-based CED efforts suggests that this simple equation does not accurately capture the relationship of market strategies to poverty alleviation. For instance, studies of local market-based CED initiatives have generated a picture of community deterioration that is resistant to market intervention.<sup>251</sup> Randy Stoecker, in his review of the literature on CDC performance, notes that “[n]umerous analysts, including CDC advocates, cannot find evidence that CDCs have enough impact to reverse neighborhood decline . . . or that the development they produce would not have happened anyway.”<sup>252</sup> Citing a study by Avis Vidal,<sup>253</sup>

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250. See VICTORIA LYALL & WILLIAM SCHWEKE, USING ALLIANCE-BASED DEVELOPMENT STRATEGIES FOR ECONOMIC EMPOWERMENT 2 (1996) (stating that proponents of growth-oriented policies argue that the benefits of economic growth policies “will fall to the poor . . . and lift them out of poverty”).

251. See, e.g., BERNDT, *supra* note 36, at 122 (noting that “CDCs have made very little impact on employment, and they have not even begun to affect the physical makeup of the communities served”).

252. Stoecker, *supra* note 31, at 3. Other analysts have reached similar conclusions. See, e.g., DAVID RUSK, INSIDE GAME OUTSIDE GAME: WINNING STRATEGIES FOR SAVING

Stoecker asserts that only twenty to thirty percent of CDC-sponsored housing and business development programs have “substantially impacted” their neighborhoods.<sup>254</sup> He notes that other researchers have demonstrated the high failure rate of CDCs and their inability to effectively promote neighborhood economic self-sufficiency.<sup>255</sup> Stoecker further suggests that CDCs not only fail to ameliorate poverty, but may actually worsen conditions in poor communities by “disorganizing” existing social and political structures and facilitating gentrification.<sup>256</sup>

Other studies have specifically evaluated the impact of commercial development projects on low-income neighborhoods. Focusing particularly on local redevelopment policies, these studies have looked at whether public subsidies for business development in distressed neighborhoods—in the form of tax increment financing, tax-exempt bonds, below-market loans, tax abatements and credits, grants, and other mechanisms<sup>257</sup>—have translated into

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URBAN AMERICA 48-52 (1999) (finding that even “exemplary” CDCs have failed to significantly improve economic conditions in low-income neighborhoods).

253. See VIDAL, *supra* note 197.

254. Stoecker, *supra* note 31, at 3.

255. See *id.*; see also John Foster-Bey, *Bridging Communities: Making the Link Between Regional Economies and Local Community Development*, 8 STAN. L. & POL’Y REV. 25, 33 (1997) (“Sadly . . . there appears to be little evidence that housing and commercial development produces the income and wealth improvements necessary to move significant numbers of people out of poverty.”).

256. See Stoecker, *supra* note 31, at 10. Specifically, Randy Stoecker claims that CDCs become “disorganizing” forces in their communities by “becom[ing] enmeshed in the networks that caused the problems and thus becom[ing] limited to development possibilities dictated by the market rather than directed by the people.” *Id.* He adds that “[c]ommunity development, when it emphasizes the physical over the social and remains limited to the possibilities dictated by capital, may actually increase turnover, displacement, and otherwise disorganize a community.” *Id.*

257. See CENTER FOR COMMUNITY CHANGE, BRIGHT PROMISES; QUESTIONABLE RESULTS: AN EXAMINATION OF HOW WELL THREE GOVERNMENT SUBSIDY PROGRAMS CREATED JOBS 9-11 (1990) [hereinafter CENTER FOR COMMUNITY CHANGE, BRIGHT PROMISES] (highlighting Urban Development Action Grants, industrial revenue bonds, and enterprise zones as mechanisms for providing public subsidies to businesses); CENTER FOR COMMUNITY CHANGE, JOBS: SOME ORGANIZING STRATEGIES 9-10 (1997) [hereinafter CENTER FOR COMMUNITY CHANGE, JOBS] (discussing tax breaks, tax increment financing, state grants and loans, and industrial revenue bonds); SHEA CUNNINGHAM, JESSICA GOODHEART, PAUL MORE, MELANIE MYERS & DAVID RUNSTEN, LOS ANGELES ALLIANCE FOR A NEW ECONOMY & UCLA CENTER FOR LABOR RESEARCH AND EDUCATION, SCHOOL OF PUBLIC POLICY AND SOCIAL RESEARCH, TAKING CARE OF BUSINESS? AN EVALUATION OF THE LOS ANGELES BUSINESS DEVELOPMENT TEAM 3-5 (1999) (providing an overview of public subsidies offered to attract and retain local businesses); MORE ET AL., *supra* note 33, at 3-5 (describing tax increment financing); POLLIN & LUCE, *supra* note 6, at 60-61 (discussing Industrial Development Bonds, CDBGs, and other business subsidies); Quinones, *Redevelopment Redefined*, *supra* note 14, at 710-12 (stating that redevelopment agencies can impose tax increment financing and tax abatement regimes to finance development efforts over the course of the project term).

economic benefits for poor residents. Robert Pollin and Stephanie Luce, in a review of the literature, conclude that redevelopment “policies have failed to reduce urban poverty and reverse the decline of urban communities, even when, as is the case in some cities, these policies have promoted the growth of downtown businesses.”<sup>258</sup> In particular, Pollin and Luce find that public subsidies do not contribute to overall job creation on a regional level and tend to benefit the businesses that receive subsidies over members of low-income communities.<sup>259</sup>

The recent history of redevelopment in Los Angeles supports the view that publicly subsidized business development does not adequately redress poverty. For example, a study of nine commercial projects subsidized by the Los Angeles Community Redevelopment Agency during the 1990s found that, despite a public investment of \$193 million dollars,<sup>260</sup> most of the jobs created under the auspices of community revitalization were at or below the poverty level.<sup>261</sup> An analysis of the lending activity of the Los Angeles Community Development Bank showed that substantial public outlays to private businesses within the Los Angeles Empowerment Zone did not lead to a significant increase in jobs for low-income residents.<sup>262</sup>

Analyses of small business development programs and market-oriented affordable housing projects have also cast doubt on their poverty alleviation potential. Although the well-known Self-Employment Learning Project study conducted by the Aspen Institute found positive economic gains for low-income business owners involved in seven different microenterprise

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258. POLLIN & LUCE, *supra* note 6, at 55. Robert Pollin and Stephanie Luce note the public financing of Cleveland’s downtown sports and entertainment complex as an example of subsidies that did not improve the city’s basic socioeconomic problems. *Id.* at 74-75.

259. *See id.* at 68-76; *see also* GREG LEROY & TYSON SLOCUM, ECONOMIC DEVELOPMENT IN MINNESOTA: HIGH SUBSIDIES, LOW WAGES, ABSENT STANDARDS 1 (1999) (finding that, despite very high public subsidies to support economic development in Minnesota, the subsidized corporations had created jobs with “surprisingly low” wages); McFarlane, *supra* note 7, at 331-32 (noting that downtown development subsidies have “failed to benefit the neighborhoods that are home to the poorest residents of the cities,” and adding that this type of “economic development [has promoted] capital accumulation and mobility that intentionally bypasses poor neighborhoods”).

260. *See* MORE ET AL., *supra* note 33, at 12.

261. *See id.* at iii (finding that, of the jobs created in the projects studied, “more than 55 percent are retail jobs that pay an average wage of less than \$8 an hour, below the \$8.32 an hour needed to keep a family of three off public assistance. . . . [and most (about 70%) paid an average wage of less than \$6.50 an hour”]; *see also* CENTER FOR COMMUNITY CHANGE, BRIGHT PROMISES, *supra* note 257, at 17-22 (reviewing data from a study of 21 development projects receiving federal subsidies and questioning the adequacy of employer performance in creating quality jobs).

262. *See* Sterngold, *supra* note 33, at 11 (stating that, although the Los Angeles Community Development Bank made \$97 million in loans to businesses within the Empowerment Zone (EZ), only 249 jobs were retained or created for EZ residents, fewer than a third of the number required).

programs,<sup>263</sup> Louise Howells has noted that small business development projects suffer from several limitations that inhibit their effectiveness in moving welfare-dependent individuals out of poverty.<sup>264</sup> In particular, Howells asserts that microenterprise development, which rests on the assumption that “the market economy can provide subsistence for everyone who chooses to participate,”<sup>265</sup> is typically not a successful antipoverty strategy for poor persons without access to the types of personal resources—education, job skills, and strong social networks—that foster business success.<sup>266</sup> Moreover, Howells finds that microenterprise development is hampered by high failure rates and inadequate financial and technical assistance, which undermine its efficacy as an antipoverty strategy.<sup>267</sup> She concludes that if “the rationale for microenterprise programs is to increase family income and security, program dollars may be better spent assisting individuals to find a reliable job with benefits.”<sup>268</sup>

Critics of the LIHTC affordable housing program have similarly questioned the effectiveness of a market-oriented approach to providing housing to the poor.<sup>269</sup> Specifically, studies of the LIHTC suggest that it has failed to satisfy the demand for low-income housing,<sup>270</sup> and has had an ambiguous effect on the overall production of affordable units.<sup>271</sup> In addition, since federal law does not require that all units in an LIHTC project be rented at low-income rates,<sup>272</sup> a significant portion of the subsidy is used to build housing for higher-income tenants. Further, analysts have noted that affordable units have become increasingly costly under the LIHTC program,<sup>273</sup> as credit proceeds are used to pay for the lawyers, consultants, and other LIHTC

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263. See PEGGY CLARK & AMY KAYS, THE ASPEN INSTITUTE, MICROENTERPRISE AND THE POOR: FINDINGS FROM THE SELF-EMPLOYMENT LEARNING PROJECT FIVE YEAR STUDY OF MICROENTREPRENEURS 15-26 (1999).

264. See Howells, *supra* note 34, at 166-71.

265. See *id.* at 164.

266. See *id.* at 167-68.

267. See *id.* at 169-70. White has also noted, “There are very few well-documented examples of how the [microenterprise] strategy can positively impact on the economic forces that constrain low-income women’s economic opportunity . . . .” White, *supra* note 14, at 332.

268. Howells, *supra* note 34, at 169.

269. See Cohen, *supra* note 16, at 548-52.

270. See *id.* at 550.

271. See *id.* (“[B]ecause there is no source of information that reveals the number of low-income units that would have been constructed if the credit program did not exist, . . . it is difficult to determine whether the credit program has resulted in any net additions to the low-income housing stock.”).

272. See I.R.C. § 42(g) (2001).

273. See Frank A. Racaniello, *Extending the Low-Income Housing Tax Credit: An Empirical Analysis*, 22 RUTGERS L.J. 753, 761-62 (1991) (noting that the credit cost per unit of housing built has risen from \$1,646 in 1987 to \$2,855 in 1990).

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professionals necessary to navigate the complex syndication process.<sup>274</sup> Thus, as in the case of commercial development and microenterprise, market-driven housing programs have not produced clear gains for low-income communities. Overall, the tenuous evidence of poverty reduction that emerges from studies of market-based CED techniques points to the need for a more targeted CED approach that provides stronger mechanisms for channeling the benefits of economic growth to the poor.

B. *Market-Based CED Depoliticizes Antipoverty Advocacy*

A second limitation of market-based CED is that it does not address the crucial political dimension of poverty. The market-based model has conceptualized poverty alleviation as primarily a matter of structuring the appropriate economic incentives to spur capital inflow and business expansion in distressed neighborhoods. Within this framework, the notion of building political power among the poor to challenge institutional arrangements is viewed as inimical to the goal of packaging low-income communities as attractive business environments. However, rather than fostering community renewal, the depoliticization of CED work has instead circumscribed antipoverty efforts and hindered progressive movement building.

Low-income communities are not simply constituted by impersonal market forces; rather, they are the product of a combination of intersecting political decisions and private actions. In fact, as David Troutt has shown, “ghettoes” are legal and political constructions, created and delimited by a history of residential segregation, federally sponsored mortgage redlining, racially disparate zoning practices, urban renewal policies, and spatially concentrated public housing.<sup>275</sup> Neighborhood formation has also been shaped by political

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274. See Cohen, *supra* note 16, at 557-58 (citing CONGRESSIONAL BUDGET OFFICE, THE COST EFFECTIVENESS OF THE LOW-INCOME HOUSING TAX CREDIT COMPARED WITH HOUSING VOUCHERS: A CBO STAFF MEMORANDUM (1992), reprinted in 56 TAX NOTES 493 (1992)).

275. See David Dante Troutt, *Ghettoes Made Easy: The Metamarket/Antimarket Dichotomy and the Legal Challenges of Inner-City Economic Development*, 35 HARV. C.R.-C.L. L. REV. 427, 434-66 (2000) [hereinafter Troutt, *Ghettoes Made Easy*]; David Dante Troutt, *Ghettoes Revisited: Antimarkets, Consumption, and Empowerment*, 66 BROOK. L. REV. 1, 16 (2000); see also MELVIN L. OLIVER & THOMAS M. SHAPIRO, BLACK WEALTH/WHITE WEALTH: A NEW PERSPECTIVE ON RACIAL INEQUALITY 15-23 (1997) (highlighting Federal Housing Authority lending practices and bank redlining as crucial determinants of contemporary racial inequality); McFarlane, *supra* note 7, at 332-35 (noting the various policy factors that have influenced the formation of urban neighborhoods, including the federal mortgage interest tax deduction, Federal Housing Administration policies, bank redlining practices, federal highway policies, local zoning ordinances, and local taxation requirements); Anthony D. Taibi, *Racial Justice in the Age of the Global Economy: Community Empowerment and Global Strategy*, 44 DUKE L.J. 928, 982 (1995) (“The challenge for the Left is to obtain legitimacy through grass-roots social action and work to create common-sense awareness of the fact that there is no such thing as ‘the

and legal decisions regarding the geographic scope of desegregation orders, the requirements for municipal secession, and the financing of public school education.<sup>276</sup> Given that low-income communities have evolved as a product of these processes, a market-based CED approach that emphasizes economic expansion and ignores the complementary need for political mobilization is insufficient to redress poverty.<sup>277</sup> Without community-based efforts to demand greater access to public resources—in the form of education, job training, child care, and other services—low-income communities continue to lack the infrastructure necessary to build economic growth.<sup>278</sup>

By privileging market-based housing and business development strategies, CDCs have distanced themselves from the type of political engagement necessary to redress the problems of concentrated poverty, joblessness, and income stratification. Peter Dreier, for instance, has commented: “CDCs are often reluctant to engage directly in political action—whether it means mobilizing community residents around elections, protesting public policy, or advocating for different policies.”<sup>279</sup> Michael Owens has similarly concluded that consistent political participation is uncommon among CDCs.<sup>280</sup> Some

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market’ separate and apart from its legal and regulatory framework . . .”).

276. See Richard Thompson Ford, *The Boundaries of Race: Political Geography in Legal Analysis*, 107 HARV. L. REV. 1843, 1863-78 (1994).

277. See Stoecker, *supra* note 31, at 5 (arguing that, under the current CED model, “poor neighborhoods are seen as weak markets . . . requiring reinvestment rather than as oppressed communities requiring mobilization, leading CDCs to work within the existing economic rules”).

278. See Sam Fulwood III, *Prosperity a New Challenge for Black Entrepreneur*, L.A. TIMES, Aug. 10, 1999, at A1, A12 (quoting Georgia Institute of Technology economist Danny Boston rejecting the free market approach to poverty alleviation and arguing instead that that “[y]ou have to focus on the whole social destabilization of the [inner-city] community before you can deal with the economics”).

279. Peter Dreier, *Comment on Margaret Weir, Power, Money, and Politics in Community Development*, in URBAN PROBLEMS AND COMMUNITY DEVELOPMENT 178, 180 (Ronald F. Ferguson & William T. Dickens eds., 1999).

280. Owens, *supra* note 66 (“Whether servicing black or nonblack neighborhoods, consistent political participation, electoral or nonelectoral, directly or indirectly, is uncommon among CDCs.”).

Few CDCs undertake “all those activities by private citizens [and institutions] that are more or less directly aimed at influencing the selection of government personnel and/or the decisions that they make”. The majority of the development activities of CDCs concern service delivery such as affordable housing production and social welfare programs, not political development. Organizing and electoral mobilization, policy formulation and advocacy, and protest and litigation are not priorities of CDCs. Edward Blakely and Armando Aparicio (1990) offer evidence. Responses to their survey of fifty-eight CDCs in California demonstrate that the delivery of services, especially housing, and job creation, is the highest priority of CDCs; establishing and maintaining active political bases and community organizing are among the lowest concerns.

*Id.* at 5 (citing SIDNEY VERBA & NORAM NIE, PARTICIPATION IN AMERICA: POLITICAL DEMOCRACY AND SOCIAL EQUALITY 2 (1971) and Edward Blakely & Armando Aparicio, *Balancing Social and Economic Objectives: The Case of California’s Community*

analysts have charged that CDC political inaction has compromised the integrity of CED work, transforming CDCs into just “another developer following a supply-side free market approach to redevelopment rather than fighting for the social change necessary to support sustainable communities.”<sup>281</sup> Others have argued that market-oriented strategies have undermined the struggle for economic justice by diverting scarce resources away from grassroots political mobilization and providing a justification for the withdrawal of government programs from distressed communities.<sup>282</sup> It is true that many CDCs have made the strategic decision to adopt market-based approaches not out of a conscious rejection of political action, but rather out of financial necessity. For instance, many CDCs in the 1970s focused on affordable housing development because of the availability of federal funding streams.<sup>283</sup> Access to funding through the LIHTC program over the past

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*Development Corporations*, 21 J. COMMUNITY DEV. SOC'Y (1990)). Others have criticized CDCs' failure to mobilize community members for political action. See BARBARA FERMAN, CHALLENGING THE GROWTH MACHINE: NEIGHBORHOOD POLITICS IN CHICAGO AND PITTSBURGH 124 (1996) (“[T]he collaboration required by economic development activities of CDCs encourages consensual relations . . . . However, consensual approaches prevent any serious questioning of the larger political economy within which these organizations operate . . . . These organizations have not changed the larger relations of power within the city, and their consensus prevents that.”); William Traynor, *Community Development: Does It Need to Change?*, NEIGHBORHOOD WORKS, April-May 1992, at 9 (stating that the CDC model “has confused the building of power with the building of structures”); Margaret Weir, *Power, Money, and Politics in Community Development*, in URBAN PROBLEMS AND COMMUNITY DEVELOPMENT, *supra* note 279, at 139, 140 (“Primarily concerned with development activities, these organizations have done little to build power in low-income communities.”); Hess, *supra* note 74 (“[M]any observers note that CDCs’ attention to producing services and products tends to ‘bend’ the community organizing and political work it engages in away from the mass mobilization and broad political-structural goals of traditional community organizing.”); see also GOETZ, *supra* note 66; HERBERT RUBIN & IRENE RUBIN, COMMUNITY ORGANIZING AND DEVELOPMENT (1992); Peter Dreier, *Philanthropy and the Housing Crisis: Dilemmas of Private Charity and Public Policy in the United States*, in SHELTER AND SOCIETY: THEORY, RESEARCH, AND POLICY FOR NONPROFIT HOUSING (C. Theodore Koebel ed., 1998). Stoecker, in particular, has argued that CDCs have lacked a confrontational organizing component, which is necessary “to bring capital into neighborhoods that cannot produce a quick profit for investors.” Stoecker, *supra* note 31, at 12; see also Randy Stoecker, *Community Organizing and Community-Based Redevelopment in Cedar-Riverside and East Toledo*, 2 J. COMMUNITY PRAC. 1 (1995) [hereinafter Stoecker, *Community Organizing and Community-Based Redevelopment*].

281. Stoecker, *supra* note 31, at 3.

282. See ALAN C. TWELVETREES, ORGANIZING FOR NEIGHBOURHOOD DEVELOPMENT: A COMPARATIVE STUDY OF COMMUNITY DEVELOPMENT CORPORATIONS AND CITIZEN POWER ORGANIZATIONS 169 (1989) (“At best then, so the argument goes, CDCs are an irrelevance which diverts the talents of local people away from political pressure on those institutions which do have the power to revitalise the ghetto.”); Hess, *supra* note 74 (“[C]ommunity development organizations can also be used to justify a ‘bootstrap’ political agenda. That is to say, an argument that voluntary action through non-governmental organizations is sufficient for resolving the crisis in the cities.”).

283. See PEIRCE & STEINBACH, *supra* note 65, at 26.

decade has further cemented CDCs to the market model. While these financial imperatives do not preclude the coexistence of market-based development and political activism within CDCs—indeed, many CDCs have successfully integrated the two<sup>284</sup>—the structural constraints imposed by funding sources on CDC activities have led to a drift away from political confrontation and have reinforced the dominance of market-based strategies.

The failure to confront the politics of poverty has limited the effectiveness of CED efforts. It has also enervated progressive political energies by focusing resources on creating efficient market actors rather than building political power. To the extent that CED has become aligned with the neoliberal tenets of privatization and economic growth, it has reinforced the perceived immutability of existing market arrangements.<sup>285</sup> Although not responsible for the rise of what Pierre Bourdieu has termed the “tyranny of the market,”<sup>286</sup> the current approach to CED nevertheless has supported the market order by placing the weight of progressive advocacy behind a program of business expansion. Offering a market-friendly, depoliticized, version of social change practice, CED has been readily assimilated into the discourse of free market orthodoxy. This orthodoxy, in turn, has been translated into a programmatic agenda inimical to social welfare policies and labor protections that interfere with market efficiency. Therefore, despite its sensitivity to community needs, the market orientation of CED advocacy has prevented it from mobilizing the type of grassroots political resources necessary to advance a redistributive, worker-centered agenda.

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284. NATIONAL CONGRESS FOR COMMUNITY ECONOMIC DEVELOPMENT, COMMUNITY-BASED DEVELOPMENT ORGANIZATIONS (1999) (finding that two-thirds of CDCs responding to a national survey were engaged in community organizing work); MERCER SULLIVAN, MORE THAN HOUSING: HOW COMMUNITY DEVELOPMENT CORPORATIONS GO ABOUT CHANGING LIVES AND NEIGHBORHOODS (1993) (finding significant organizing activity among CDCs); see also Ross J. Gittel & Margaret Wilder, *Community Development Corporations: Critical Factors that Influence Success*, 21 J. URB. AFF., 341, 344 (1999) (noting that CDCs have organized community members); Lee Winkelman, *Massachusetts Community Development Corporations and Community Organizing* (1998) (Comm-Org: The Online Conference on Community Organizing and Development), at <http://comm-org.utoledo.edu/papers98/winkelman.htm>; Lee Winkelman, *Organizing Renaissance: Twin Cities CDC Leads Exploration of Organizing by Massachusetts CDCs*, 101 SHELTERFORCE ONLINE, Sept.-Oct. 1998 [hereinafter Winkelman, *Organizing Renaissance*], at <http://www.nhi.org/online/issues/101/winkleman.html>.

285. Unger has discussed the failure among progressives to envision alternatives to the dominant neoliberal order, noting that “[e]verywhere in the world . . . there is today an experience of exhaustion and perplexity in the formulation of credible alternatives to the neoliberal program and to its defining belief in the convergence toward a single system of democratic and market institutions.” See UNGER, *supra* note 127, at 3.

286. PIERRE BOURDIEU, ACTS OF RESISTANCE: AGAINST THE TYRANNY OF THE MARKET (1998).



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C. *Market-Based CED Privileges Local Incrementalism Over Broad Structural Reform*

A further limitation of market-based CED is its emphasis on local economic reform. CED's focus on localism does nothing to seriously challenge the structural determinants of poverty and diminishes the importance of large-scale, coordinated social change strategies. Its failure to sufficiently address the broader spatial and institutional dimensions of poverty has constrained CED advocacy, disassociating it from an agenda of systemic economic transformation.

Concern about the narrow scope of market-based CED has prompted a theoretical and practice-based critique of local reform efforts. On the theoretical level, there has been a challenge to the postmodern underpinnings of localism. In particular, scholars have questioned whether postmodern micropolitics, which privileges local empowerment over broad-based structural change, can provide a viable foundation for a progressive response to the increasing concentration of political and economic decision-making power.<sup>287</sup> Carl Boggs, for instance, has critiqued the Left's retreat from the realm of movement politics and the proliferation of disconnected local organizing efforts in the face of the increasing entrenchment of corporate power.<sup>288</sup> Another critic of localism has been legal scholar Joel Handler, who has suggested that micropolitical efforts cannot seriously challenge the hegemony of liberal capitalism.<sup>289</sup>

Commentators analyzing the practical impact of CED at the grassroots level have voiced skepticism about the efficacy of local market-based programs in light of the increasingly interconnected nature of urban economies.<sup>290</sup> John Foster-Bey has argued that "community development strategies which aspire to reduce poverty and revitalize cities by focusing merely upon individual neighborhoods are insufficient to address the regional roots of the problem."<sup>291</sup> Specifically, he has contended that the urban metropolis, shaped by suburbanization, the dispersal of employment opportunities, and poverty concentration,<sup>292</sup> is not amenable to place-based economic revitalization approaches and, instead, requires the implementation of "community-based

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287. See Cummings & Eagly, *supra* note 74, at 484-88.

288. See BOGGS, *supra* note 164, at 226-29.

289. See Handler, *supra* note 29, at 719.

290. See HALPERN, *supra* note 61, at 232 (arguing that "even the most sensible policies, practices, and investments, if limited to local reform or community renewal, will have only marginal impact without attention to societal context"); see also Timothy Barnekov & Daniel Rich, *Privatism and the Limits of Local Economic Development Policy*, 25 URB. AFF. Q. 212 (1989); Peter Dreier & Dennis W. Keating, *The Limits of Localism: Progressive Housing Policies in Boston, 1984-1989*, 26 URB. AFF. Q. 191 (1990).

291. Foster-Bey, *supra* note 255, at 40.

292. See *id.* at 29.

connection strategies.”<sup>293</sup> Similarly, Stoecker has critiqued the local orientation of CDCs, which, he asserts, inhibits access to outside capital and professional expertise, while minimizing the need for comprehensive strategies to redress poverty.<sup>294</sup> Kristina Smock has also charged that local interventions cannot adequately respond to urban problems generated by broader economic and political forces, especially since local community groups rarely have access to the governmental and corporate decision makers who set the political agenda.<sup>295</sup> Those critical of CED localism have focused particular attention on the federal Empowerment Zone Program, which has become the symbol of the type of place-based urban reform strategy that ignores the role of economic restructuring and racial discrimination in creating the boundaries of low-income neighborhoods.<sup>296</sup>

The limitations of localism identified in these analyses underscore the need for a revised conception of CED practice that links “inner-city residents to a larger scope of economic and social opportunity.”<sup>297</sup> Rather than concentrating exclusively on neighborhood development as a poverty reduction strategy, practitioners must begin to look beyond community boundaries to a more comprehensive antipoverty approach that acknowledges the significance of regional and transnational networks in the process of economic reform.<sup>298</sup>

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293. *Id.* at 34.

294. *See* Stoecker, *supra* note 31, at 6-7. Additionally, Stoecker argues that CDC localism generates “victim blaming” as grossly underfunded CDCs are given the daunting responsibility of neighborhood poverty alleviation and then blamed when they fail to deliver. *Id.* at 7.

295. *See* Smock, *supra* note 126:

An important limitation of targeted approaches is that many of the problems faced by local communities were not created by the community and cannot be solved through local action. The dynamics of inner city neighborhoods are often controlled by government entities and corporations from outside the community. Local community groups rarely have the influence or resources to affect the decisions of these outside actors.

*Id.*

296. *See* McFarlane, *supra* note 7, at 342 (“Because the Empowerment Zones Program fails to acknowledge the structural issues confronting ghetto communities—as well as the spatial and ideological biases of economic development, this program and others similar to it are unlikely to ever appropriately address the oppression and subordination experienced by these communities.”). Other commentators have made similar criticisms of Empowerment Zones. *See, e.g.,* Winton Pitcoff, *EZ'er Said than Done*, 112 SHELTERFORCE ONLINE, July-Aug. 2000, at <http://www.nhi.org/online/issues/112/pitcoff.html> (quoting David Wright, director of urban studies at the Rockefeller Institute of Government at SUNY Albany, who criticizes the “paradoxical” nature of the Empowerment Zone concept, stating that “the idea of drawing bright red boundaries and focusing resources only within them is inconsistent with what might be best for the people and those areas”).

297. Foster-Bey, *supra* note 255, at 40.

298. *See, e.g.,* Frances Lee Ansley, *Rethinking Law in Globalizing Labor Markets*, 1 U. PA. J. LAB. & EMP. L. 369 (1998); Peter Pitegoff, *Shaping Regional Economies to Sustain Quality Work: The Cooperative Health Care Network*, in *HARD LABOR*, *supra* note 15, at 96; Peter W. Salsich, Jr., *Thinking Regionally About Affordable Housing and Neighborhood*

*D. Market-Based CED Impedes the Formation of Cross-Racial Alliances*

By employing a geographically targeted approach that seeks to create economically self-sufficient neighborhoods, market-based CED programs largely accept the existing spatial framework of urban geographies, often imposing official designations—such as Empowerment Zones, redevelopment project areas, CDC service areas—on enclaves of economic distress. This reinscription of community boundaries is central to the logic of the market approach: It is necessary to define economically disadvantaged urban space in order to effectively structure tax incentives, favorable loan packages, and other financial benefits that would induce increased commercial and real estate investment. Thus, the CED model works within the existing spatial distribution of poverty and does not address the nexus between poverty concentration and residential segregation—leaving unchallenged the racial cleavages that dissect urban geographies.

The persistence of racial segregation in urban areas is well established.<sup>299</sup> As Douglas Massey and Nancy Denton have shown, residential segregation is a key determinant of poverty concentration, confining people of color to urban areas where their spatial isolation contributes to high levels of neighborhood poverty and makes them uniquely vulnerable to economic downturns.<sup>300</sup> Race marks the boundaries of urban poverty: Communities with high poverty concentrations are disproportionately comprised of people of color.<sup>301</sup> A segregation analysis, therefore, reveals the limitations of viewing low-income neighborhoods merely as economically disadvantaged geographic units. It is the spatial intersection of race and poverty that shapes the contours of distressed urban environments.<sup>302</sup>

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*Development*, 28 STETSON L. REV. 577, 600 (1999).

299. See DOUGLAS MASSEY & NANCY A. DENTON, *AMERICAN APARTHEID* 74-78 (1993) (discussing the prevalence of urban “hypersegregation”).

300. See *id.* at 118-30; see also Camille Zubrinsky Charles, *Residential Segregation in Los Angeles*, in *PRISMATIC METROPOLIS: INEQUALITY IN LOS ANGELES* 167, 168 (Lawrence D. Bobo, Melvin L. Oliver, James H. Johnson, Jr. & Abel Valenzuela, Jr. eds., 2000).

301. See PAUL JARGOWSKY, *POVERTY AND PLACE: GHETTOS, BARRIOS, AND THE AMERICAN CITY* 61 (1997) (“One common impression of poor neighborhoods is correct: they are predominantly inhabited by members of minority groups.”); see also John O. Calmore, *A Call to Context: The Professional Challenges of Cause Lawyering at the Intersection of Race, Space, and Poverty*, 67 *FORDHAM L. REV.* 1927, 1931 (1999) (stating that, in 1990, “nearly 75% of those residing in high-poverty neighborhoods were black or Latino”).

302. See Calmore, *supra* note 301, at 1943 (“The racialized inner-city poor, particularly African American and Puerto Ricans, experience concentrated poverty in their neighborhoods that is compounded by a spatial and geographic marginalization that deepens their intersectional racist and economic subordination.”); Ford, *supra* note 276, at 1854 (stating that race is “seen as intimately related to the economic and social condition of political space”).

Focusing on relative economic disadvantage, market-based CED minimizes the racial dimensions of poverty.<sup>303</sup> By accepting existing neighborhood configurations, the market approach tends to reinforce racialized community borders and maintain existing patterns of racial segregation.<sup>304</sup> This place-based focus impedes efforts to forge a cross-racial coalition to advance a political agenda sensitive to the needs of low-income workers. As CED advocates target resources to specific underdeveloped neighborhoods, they neglect to foster inter-community collaboration around issues of common concern to poor city residents. Instead, they work with outside elites to leverage financial capital to increase neighborhood wealth without challenging the institutional discrimination and governmental policies that perpetuate racial and economic stratification. “This myopic approach effectively ensures that those who are poor or disadvantaged remain isolated from the problems of others who are similarly situated, thereby inhibiting, if not preventing, collective organizing.”<sup>305</sup> In order to respond adequately to the racialized nature of poverty, particularly in light of the increasing diversity of American cities, a new CED agenda is required—one that promotes inter-racial solidarity and coordinates diverse groups into an effort to rebuild the economic justice movement.

### III. RECLAIMING CED AS PROGRESSIVE POLITICAL ACTION

The market-based approach to CED has brought about significant benefits for low-income communities and highlighted the need for economic revitalization strategies. However, the market orientation that characterizes current CED efforts has proven insufficient to address the complex processes that generate poverty and has shifted the direction of antipoverty advocacy away from grassroots political engagement and toward politically passive market interventions. This Part identifies the contours of a new model of politically engaged CED that moves beyond the limiting discourse of market expansion and reconnects CED to its progressive political roots. This model prioritizes political action over market participation and fuses legal advocacy with community-based organizing in order to redistribute resources to low-income constituencies.<sup>306</sup> In contrast to the market paradigm, this approach

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303. See Troutt, *Ghettos Made Easy*, *supra* note 275, at 487.

304. See McFarlane, *supra* note 7, at 346. Some analysts have suggested that CED’s political appeal is directly related to the fact that it promotes spatial separation, rather than advancing the cause of racial integration. See, e.g., Lemann, *supra* note 2, at 21 (“[A] final political advantage of community development is that it neatly avoids what is perhaps the most perilous of all issues for elected officials—racial integration.”).

305. McFarlane, *supra* note 7, at 299-300.

306. This agenda owes much to the vision and leadership of the Center for Community Change, which has supported the development of an organizing-centered approach to job

links job creation strategies more explicitly to poverty alleviation,<sup>307</sup> while building grassroots alliances to promote economic justice.<sup>308</sup>

There are three defining features of politically engaged CED that distinguish it from its market-based counterpart. First, the politically engaged model applies legal advocacy to support community organizing around economic justice issues. Its goal is to deploy transactional lawyering in a way that builds organized low-income constituencies that can challenge the distribution of political power. The integration of CED and community organizing represents a rapprochement between two types of grassroots practice that have largely diverged since the increasing professionalization of CED work in the late 1970s.<sup>309</sup> This has occurred as organizing—with its emphasis on using public confrontation and direct action to influence political institutions<sup>310</sup>—has re-emerged during the 1990s as a viable social change

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creation by providing technical assistance and other resources. In particular, its publications have broken new ground in outlining economic justice initiatives. See CENTER FOR COMMUNITY CHANGE, JOBS, *supra* note 257, at 7 (outlining a job creation strategy focused on living wage job creation, workforce development, neighborhood development, and job retention). Several grassroots organizations in Los Angeles are advocating a shift toward these types of CED strategies. For example, the Progressive Los Angeles Network has recently offered a policy proposal to foster economic justice that emphasizes the creation of high-quality jobs, the implementation of targeted job training programs for low-income workers, the expansion of living wage policies, and accountable redevelopment. See PROGRESSIVE LOS ANGELES NETWORK, AN ECONOMIC DEVELOPMENT AGENDA FOR LOS ANGELES: TOWARDS A JUST, DEMOCRATIC, AND SUSTAINABLE ECONOMIC DEVELOPMENT POLICY (2001) [hereinafter PROGRESSIVE LOS ANGELES NETWORK] (on file with author). Organizations such as Strategic Actions for a Just Economy (SAJE) and the Los Angeles Alliance for a New Economy (LAANE) have taken similar positions. See Gilda Haas, *Turning Economic Justice into Economic Development*, MAKING SENSE, Winter 2000, at 4 (Strategic Actions for a Just Economy); Interview with Erika Zucker, General Counsel and Policy Director, Los Angeles Alliance for a New Economy (Feb. 16, 2001) (on file with author) [hereinafter Zucker Interview].

307. See CENTER FOR COMMUNITY CHANGE, JOBS, *supra* note 257, at 6-7 (“We should force the connection by demanding that *all local economic development policy have as one of its main goals the reduction or alleviation of poverty.*”); see also ALAN OKAGASKI, CENTER FOR COMMUNITY CHANGE, DEVELOPING A PUBLIC POLICY AGENDA ON JOBS 19-33 (1997).

308. For an example of how this new movement is taking shape, see Kelly Candaele & Peter Dreier, *LA’s Progressive Mosaic: Beginning to Find Its Voice*, NATION, Aug. 21, 2000, at 24 (describing the emergence of a coalition of clergy, labor, and community representatives working to forge a progressive political agenda through grassroots campaigns supporting union organizing, living wage, and affordable housing).

309. See Sandy O’Donnell & Ellen Schumer, *Community Building & Community Organizing: Issues in Creating Effective Models*, 85 SHELTERFORCE ONLINE, Jan.-Feb. 1996 (“Over the years, this partnership [between CDCs and community organizing] has weakened . . . [M]any CDCs have become enamored with bricks and mortar and technical sophistication, replacing residents on their boards and planning teams with bankers, developers, and Realtors [sic].”), at <http://www.nhi.org/online/issues/85/combuild.html>.

310. See Hess, *supra* note 74 (defining community organizing as “organizing community members to take on powerful institutions in their community through direct

practice with a newly energized leadership and an active grassroots presence.<sup>311</sup> The increasing visibility of organizing has shifted the terrain of social change work, highlighting the need for an advocacy strategy that challenges the distribution of political power in addition to promoting bricks and mortar construction in low-income areas. As organizers have become prominent community actors, more attention has been paid to their critiques of market-based CED practice, which have emphasized the tendency of CDCs to avoid the confrontational approach of community organizing in favor of cultivating partnerships with economic elites.<sup>312</sup>

In order to promote politically engaged CED, scholar-activists have urged greater collaboration between the organizing and CED communities,<sup>313</sup>

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public confrontation and action"). Hess further notes that "organizing works to change institutions and norms in the society at-large," *id.*, and that its "goal is to control the future of the community through a permanent, politically powerful, organized body of resident participants," *id.* See also MARSHALL GANZ, WHAT IS ORGANIZING?, at <http://comm-org.utoledo.edu/syllabi/ganz/ganzessay.htm> (2000).

311. For a discussion of the recent surge in organizing activity, see Dave Beckwith, *Organizing Today: Ten Reasons to Cheer!*, 101 SHELTERFORCE ONLINE, Sept.-Oct. 1998 ("Welfare 'reform' has pushed millions of families over the brink of poverty and hopelessness, but everywhere, it seems, neighborhood groups, faith-based community organizations, networks, and funders are seeing the need as an opportunity."), at <http://www.nhi.org/online/issues/101/beckwith.html>. *Shelterforce Magazine* devoted an issue to highlighting the renaissance of the organizing movement that included analyses from a diverse range of community organizers. See Henry Allen, *Organizing, Power, & Public Policy: One Foundation's Road to Supporting Community Organizing*, 101 SHELTERFORCE ONLINE, Sept.-Oct. 1998, at <http://www.nhi.org/online/issues/101/allen.html>; Ernesto Cortés, Jr., *Reclaiming Our Birthright*, 101 SHELTERFORCE ONLINE, Sept.-Oct. 1998, at <http://www.nhi.org/online/issues/101/cortes.html>; Michael Eichler, *Look to the Future, Learn from the Past*, 101 SHELTERFORCE ONLINE, Sept.-Oct. 1998, at <http://www.nhi.org/online/issues/101/eichler.html>; Kim Fellner, *Hearts and Crafts: Powering the Movement*, 101 SHELTERFORCE ONLINE, Sept.-Oct. 1998, at <http://www.nhi.org/online/issues/101/fellner.html>.

312. See Stoecker, *supra* note 31, at 12 (arguing that CDCs have lacked a confrontational organizing component, which is necessary "to bring capital into neighborhoods that cannot produce a quick profit for investors"); see also Stoecker, *Community Organizing and Community-Based Redevelopment*, *supra* note 280.

313. See O'Donnell & Schumer, *supra* note 309 (calling for the development of "people's" community development organizations and highlighting the need for greater dissemination of successful efforts to integrate community organizing and development); Interview by Harold Simon, *Pablo Eisenberg: A Career of Social Commitment*, 101 SHELTERFORCE ONLINE, Sept.-Oct. 1998 (suggesting that there should be greater integration of community development and organizing work), at <http://www.nhi.org/online/issues/101/eisenberg.html>; see also PETER MEDOFF & HOLLY SKLAR, STREETS OF HOPE: THE FALL AND RISE OF AN URBAN NEIGHBORHOOD (1994); Robert Giloth, *Organizing for Neighborhood Development*, SOC. POL'Y, Winter 1985, at 37; Ronald La Due Lake, *Community Organizing: Building Social Capital as a Development Strategy*, 35 URB. AFF. REV. 147 (1999) (reviewing ROSS GITTEL & AVIS VIDAL, COMMUNITY ORGANIZING: BUILDING SOCIAL CAPITAL AS A DEVELOPMENT STRATEGY (1998)). To integrate CED and organizing, Stoecker advocates a "community controlled organizing/planning process" that

highlighting how an integrated approach can more effectively advance shared goals of community building and economic redistribution. Douglas Hess, for example, has pointed out how organizing can support CED efforts by holding private sector partners accountable to low-income communities, while CED can promote organizing by drawing new members into the organizational fold.<sup>314</sup> Others have noted that organizing has produced the types of policy “wins”—such as the passage of the Community Reinvestment Act—that have given CED practitioners the tools necessary to create community-based economic change.<sup>315</sup> Many CDCs have responded by incorporating an organizing component into their development activities<sup>316</sup> or by becoming involved in larger-scale community building efforts that emphasize grassroots organizing.<sup>317</sup> Overall, the advent of a strong community organizing

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puts organizing before development: “The community conducts research and begins a planning/organizing process that leads to social action. After evaluating their efforts, they expand on their initial organizing to spin-off development activity.” Stoecker, *supra*, note 31, at 13.

314. See Hess, *supra* note 74.

315. See O’Donnell & Schumer, *supra* note 309:

When CDCs first proliferated in Chicago, they were tightly connected with organizing. Many CDCs grew out of neighborhood organizing campaigns. Organizing generated policy “wins” that gave CDCs the tools they needed to keep growing: the CRA is the clearest example nationally, and several organizing groups locally have “won” campaigns for CDCs to acquire vacant property and to acquire and rehab HUD-foreclosed homes.

*Id.*

316. See *id.* (“Although the majority of CDCs fail to incorporate organizing into their agendas, a growing number of other organizing projects, both in Chicago and nationwide, are beginning to draw from the ‘base community’ or ‘popular education’ organizing tradition.”); Winkelman, *Organizing Renaissance*, *supra* note 284 (citing seven different types of organizing work done by Massachusetts CDCs: (1) residents’ council organizing; (2) organizing to get control of development resources; (3) grassroots community planning; (4) issue organizing; (5) political organizing; (6) community building events; and (7) organizing as support for development).

317. For example, many CDCs are engaging in comprehensive community initiatives (CCIs).

[CCIs] aspire to foster a fundamental transformation of poor neighborhoods and the circumstances of individuals who live there. The change they seek is comprehensive, that is, inclusive of all sectors in the neighborhood—social, educational, economic, physical, and cultural—and focused on community building, that is, strengthening the capacity of neighborhood residents, associations, and institutions.

Anne C. Kubish, *Comprehensive Community Initiatives: Lessons in Neighborhood Transformation*, 85 SHELTERFORCE ONLINE, Jan.-Feb. 1996, at <http://www.nhi.org/online/issues/85/compcominit.html>. For further discussion of CCIs and other large-scale community building projects, see Winton Pitcoff, *Comprehensive Community Initiatives: Redefining Community Development*, 96 SHELTERFORCE ONLINE, Nov.-Dec. 1997, at <http://www.nhi.org/online/issues/96/ccis.html>; William Traynor, *Community Building Hope and Caution*, 83 SHELTERFORCE ONLINE, Sept.-Oct. 1995, at <http://www.nhi.org/online/issues/83/combuild.html>; Robert O. Zdenek, *Toward Comprehensive Approaches for Strengthening Communities*, 74 SHELTERFORCE ONLINE, Mar.-Apr. 1994, at <http://www.nhi.org/online/issues/74/zdenek.html>; see also *Comprehensive Community Initiatives: Power and Race in CCIs*, 97 SHELTERFORCE ONLINE, Jan.-Feb. 1998, at

movement has challenged CED practitioners to reclaim their commitment to structural political change and align their development activities with the work of their organizing counterparts.<sup>318</sup>

The second key attribute of this new model is that it seeks to situate CED advocacy within the context of a broader progressive movement on behalf of marginalized communities. This has been most evident in the increasing formation of strategic alliances between CED practitioners and other grassroots actors—such as community organizers, labor representatives, and clergy—who have the mass-based constituencies necessary to leverage structural change.<sup>319</sup> These grassroots formations, particularly the community-labor coalitions, have become increasingly powerful, advocating for living wage and resident hiring provisions, promoting publicly funded job creation, negotiating worker factory buy-outs, providing strike support, and blocking industrial plant closings.<sup>320</sup>

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<http://www.nhi.org/online/issues/97/stone.html>; Hess, *supra* note 74; Smock, *supra* note 126.

318. Sandy O'Donnell & Ellen Schumer have stated the case for the greater integration of organizing and development practice in these terms:

[W]ithout organizing, the effectiveness, legitimacy, and staying power of community development organizations is limited. With organizing, residents can learn to both build community from within and to own and guide the community development process. Further, with an organizing/capacity building component, the community development movement can build the desperately needed political will—and muscle—to change policies that impede the progress of low-income communities.

O'Donnell & Schumer, *supra* note 309. Kenneth Galdston has also argued that economic development work should be guided by organizing principles: “Development work has to grow out of the power base of a successful citizen action organization if organizing is to remain the dominant strategy in this pairing of strategies (as we believe it must . . .).” Galdston, *supra* note 32, at 3; *see also* Ken Galdston, *Regional Citizen Action: New England's InterValley Project Advances the Cutting Edge of Democratic Economic Development*, MAKING WAVES, Autumn 1997, at 5 [hereinafter Galdston, *Regional Citizen Action*].

319. *See, e.g.*, Thomas J. Lenz, *Building a Force for the Common Good: United Power for Action and Justice*, 101 SHELTERFORCE ONLINE, Sept.-Oct. 1998 (describing the organizing efforts of United Power for Action and Justice, a multiracial, multidominational organization in Chicago, comprised of union representatives, community activists, neighborhood developers, and community health center leaders), at <http://www.nhi.org/online/issues/101/lenz.html>; *see also* Galdston, *Regional Citizen Action*, *supra* note 318, at 4.

320. *See City-Owned Hospital Is the Focus of a Community/Labor Campaign Merrimack Valley Project*, 10 ORGANIZING: NEWSL. ON JOBS, TRANSP. & WELFARE REFORM ORGANIZING, June-July 1998 (describing campaign by the Merrimack Valley Project—a coalition of forty-eight religious congregations, labor unions, and tenant organizations—“to maintain jobs and community-control at the city-owned Hale Hospital” in Haverhill, Massachusetts), at <http://www.communitychange.org/organizing/mvp10.htm>; *Community and Labor Organizations Come Together Around Public Job Creation*, 10 ORGANIZING: NEWSL. ON JOBS, TRANSP. & WELFARE REFORM ORGANIZING, June-July 1998 (discussing meeting of representatives of community organizations and labor unions to “build a broader base of support for publicly funded jobs”), at <http://www.communitychange.org/organizing/union10.htm>; Ken Galdston, *Labor and*



By tapping into these emerging economic justice networks, CED lawyers have developed a more comprehensive approach to redressing poverty that coordinates the multi-faceted efforts on behalf of low-wage workers and welfare recipients.<sup>321</sup> Moreover, CED lawyers have recognized that collaboration with organized labor, faith-based entities, and poor people's organizations—which have large, relatively cohesive memberships and, in the case of unions, financial power—is critical to achieving the political clout

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*Community—A Powerful Combination*, 10 ORGANIZING: NEWSL. ON JOBS, TRANSP. & WELFARE REFORM ORGANIZING, June-July 1998:

[InterValley Project] member groups . . . have united labor union locals and AFL-CIO Labor Councils with congregations, community and tenant organizations in winning job issue campaigns including: worker buy-outs of factories threatened with closing thereby saving thousands of jobs; . . . the creation of a Manufacturing Partnership which serves as an industrial extension service helping local firms preserve and expand jobs; the establishment of a Right to Organize Provision in a city council's civil rights commission, which calls for intervention to protect a person's right to organize a labor or a tenant union.

*Id.* at <http://www.communitychange.org/organizing/Persp10.htm>; *Jobs with Justice: Labor and Community Mobilization*, 10 ORGANIZING: NEWSL. ON JOBS, TRANSP. & WELFARE REFORM ORGANIZING, June-July 1998 (highlighting Jobs with Justice, a national campaign for workers' rights and economic justice conducted by a coalition of labor, community, and religious organizations), at <http://www.communitychange.org/organizing/JwJ10.htm>; *Relationships Build Power and Job Opportunities: Essex County Community Organization*, 10 ORGANIZING: NEWSL. ON JOBS, TRANSP. & WELFARE REFORM ORGANIZING, June-July 1998 (highlighting efforts of the Essex County Community Organization and labor representatives in Massachusetts to win a commitment from machine manufacturers to train and hire local residents), at <http://www.communitychange.org/organizing/ECCO10.htm>; Louise Simmons, *Community-Labor Coalitions: A Wellspring from Connecticut*, 101 SHELTERFORCE ONLINE, Sept.-Oct. 1998 (“In recent decades in Connecticut, community-labor coalitions developed around strike support, organizing drives, plant closings, electoral campaigns, legislative battles, or specific policy issues such as health care reform.”), at <http://www.nhi.org/online/issues/101/simmons.html>; *Supporting the Right to Organize: Pioneer Valley Project—Springfield, MA*, 10 ORGANIZING: NEWSL. ON JOBS, TRANSP. & WELFARE REFORM ORGANIZING, June-July 1998 (discussing organizing work of the Pioneer Valley Project in Springfield, Massachusetts, a collaborative of four union locals, 16 congregations, and a network of tenant groups), at <http://www.communitychange.org/organizing/PVP10.htm>; *Working Partnerships: Labor and Community Advocacy in San Jose, California*, 10 ORGANIZING: NEWSL. ON JOBS, TRANSP. & WELFARE REFORM ORGANIZING, June-July 1998 (describing community organizations and labor unions that collaborated to implement a policy in Santa Clara County, California that gave priority consideration on tax break requests to companies that provided health care, paid competitive industry wages, and sought to hire local residents), at <http://www.communitychange.org/organizing/Partn10.htm>; see also BUILDING BRIDGES: THE EMERGING GRASSROOTS COALITION OF LABOR AND COMMUNITY (Jeremy Brecher & Tim Costello eds., 1990); Elizabeth M. Iglesias, *Institutionalizing Economic Justice: A LatCrit Perspective on the Imperatives of Linking the Reconstruction of “Community” to the Transformation of Legal Structures That Institutionalize the Depoliticization and Fragmentation of Labor/Community Solidarity*, 2 U. PA. J. LAB. & EMP. L. 773 (2000). For an overview of additional labor-community project collaborations, see LABOR/COMMUNITY STRATEGY CENTER, PROJECTS, at [http://www.thestrategycenter.org/body\\_projects.html](http://www.thestrategycenter.org/body_projects.html) (last visited Jan. 7, 2002).

321. See, e.g., Karl E. Klare, *Toward New Strategies for Low-Wage Workers*, 4 B.U. PUB. INT. L.J. 245, 249 (1995).

necessary to push through economic justice measures.

Finally, unlike the conventional market-based model, the new approach to CED is spatially decentered, actively cultivating cross-racial coalitions that cut across traditional community boundaries. Instead of targeting economic resources in specific neighborhoods, CED practitioners are forging linkages with community groups in different localities in order to create regional, national, and transnational structures to combat the economic deterioration of marginalized populations.<sup>322</sup> This effort to extend the geographic scope of CED promotes multiracial coalition building and establishes the structural links necessary to build a broad-based progressive movement. In this way, CED advocates are transforming the meaning of community to encompass racially and geographically dispersed groups that share common grievances arising from their economically marginalized status.<sup>323</sup>

What follows is an initial attempt to map the new direction in CED legal practice by detailing the specific areas that have become the subject of economic justice advocacy efforts. In particular, this Part demonstrates how CED lawyers are drawing upon their transactional legal expertise to draft living wage ordinances, structure worker-owned businesses, exact community benefits from publicly subsidized redevelopment, enforce statutory job creation requirements, and establish targeted job training programs. As this analysis suggests, the new approach to CED is not a repudiation of market-centered practices; rather, it represents an effort to democratize the market by redirecting

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322. Anthony Taibi has called for this type of spatially decentered, transracial political movement. See Taibi, *supra* note 275, at 934 (urging progressives to “engage in strategic cooperation with other localities so as to create structures that will protect local interests at the regional, national, and international levels”).

We must develop alternatives to existing practices and institutions of community, property, consumption, and production that are both rooted in local experiences and linked into a larger global strategy. The strategy must develop on two levels: a level of local autonomy, cultural integrity, and community economic development, and a national and global level for establishing the framework for local success.

*Id.* at 976.

323. See David Scheie, *Promoting Job Opportunity: Strategies for Community-Based Organizations*, 89 SHELTERFORCE ONLINE, Sept.-Oct. 1996:

While defined geographical neighborhoods are still an important basis for organizing constituencies and strategies, community-based groups are recognizing that “community” and “economy” are found both within and beyond neighborhoods . . . . And to have the greatest impact on people’s economic prospects, it’s important to improve their access to the regional and global economy—to markets and job opportunities beyond as well as within their neighborhoods.

*Id.* at <http://www.nhi.org/online/issues/89/promoting.html>; see also ERIC MANN & THE URBAN STRATEGIES GROUP, RECONSTRUCTING THE MOVEMENT FROM THE BOTTOM UP (excerpted from ERIC MANN, CYNTHIA HAMILTON, ANTHONY THIGPENN, DEAN TOJI, LAURA PULIDO, GEOFF RAY, ROBIN CANNON, LIAN HURST MANN & THE URBAN STRATEGIES GROUP, RECONSTRUCTING LOS ANGELES—AND U.S. CITIES—FROM THE BOTTOM UP (1993)), at [http://www.thestrategycenter.org/body\\_rlabu\\_chpt\\_4.html](http://www.thestrategycenter.org/body_rlabu_chpt_4.html) (last visited Jan. 8, 2002).

economic benefits to low-income community members.

A. *CED and Living Wage: Building an Economic Justice Movement*

In an effort to connect their advocacy with the groundswell of economic justice organizing, CED lawyers have increasingly aligned themselves with local living wage campaigns.<sup>324</sup> These campaigns, premised on the simple proposition that no one who works should live in poverty,<sup>325</sup> have grown from local skirmishes into a national movement, led by a coalition of grassroots organizations, labor unions, faith-based institutions, civil rights groups, and other community representatives.<sup>326</sup> ACORN, in particular, has played a strong role in promoting living wage legislation throughout the country, spearheading local organizing efforts, and providing technical assistance to living wage coalitions.<sup>327</sup> In order to stem the public financing of low-wage

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324. See Selena Spain & Jean Wiley, *The Living-Wage Ordinance: A First Step in Reducing Poverty*, 32 CLEARINGHOUSE REV. 252, 254 (1998) (noting how poverty lawyers, concerned about ensuring measurable economic gains for low-income communities, have turned to certain types of living wage policies as “effective vehicles for promoting community revitalization”). For a discussion of the living wage movement, see generally LAWRENCE B. GLICKMAN, *A LIVING WAGE: AMERICAN WORKERS AND THE MAKING OF CONSUMER SOCIETY* (1997); POLLIN & LUCE, *supra* note 6; Bobbi Murray, *Living Wage Comes of Age*, NATION, July 23, 2001, at 24; Robert Pollin, *Living Wage, Live Action*, NATION, Nov. 23, 1998, at 15.

325. See POLLIN & LUCE, *supra* note 6, at 1.

326. See CENTER FOR COMMUNITY CHANGE, WAGES, BENEFITS AND JOB QUALITY (1999) (“[I]t has been grassroots organizations, along with a powerful coalition of labor, civil rights and other groups, which have been demanding that publicly-subsidized jobs provide living wages, that government help create large numbers of livable wage jobs, and that economic development strategies be clearly linked to reducing poverty.”), at <http://www.communitychange.org/wages.htm> (last visited Jan. 12, 2002); see also POLLIN & LUCE, *supra* note 6, at 8-9 (discussing the role of community organizations and clergy); Spain & Wiley, *supra* note 324, at 265 (1998) (discussing living wage coalitions of labor, religious institutions, and community-based organizations); ACORN, INTRODUCTION TO ACORN’S LIVING WAGE WEBSITE (“[L]iving wage campaigns are characterized by uniquely broad coalitions of local community, union, and religious leaders who come together to develop living wage principles, organize endorsements, draft ordinance language, and plan campaign strategy.”), at <http://www.livingwagecampaign.org/introcontent.htm> (last visited Jan. 7, 2002); CAROL ZABIN & ISAAC MARTIN, LIVING WAGE CAMPAIGNS IN THE ECONOMIC POLICY ARENA: FOUR CASE STUDIES FROM CALIFORNIA (June 1999) (“At their best, living wage coalitions have evolved into a new form of collaborative organization that is truly a hybrid of labor and community constituencies, and that can integrate strategies for organizing, policy development, and alliance building.”), at <http://www.phoenixfund.org/livingwage.htm> (last visited, Jan. 12, 2002). In addition, there is increasing student activism around living wage issues. See, e.g., Carey Goldberg, *Harvard Sit-In Over Pay Ends with Deal to Re-examine Policies*, N.Y. TIMES, May 9, 2001, at A19 (describing the resolution of a three-week sit-in by Harvard students demanding a living wage for the university’s lowest-paid workers).

327. See Spain & Wiley, *supra* note 324, at 265:

jobs,<sup>328</sup> the immediate goal of these grassroots formations has been to pass legislation requiring local businesses that receive public subsidies to pay living wages to their workers.<sup>329</sup> Community and labor organizations have also used living wage campaigns to advance the longer-term goals of increasing unionization and mobilizing mass-based constituencies around issues of economic justice.<sup>330</sup>

Since Baltimore adopted the first living wage law in 1994,<sup>331</sup> over fifty

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In addition to being a strong advocate, ACORN's role in the living-wage movement has been to keep its finger on the pulse of communities around the country where campaigns are being waged. ACORN serves as the central resource point and technical-assistance provider for cities that are exploring the possibility of a living wage ordinance.

*Id.*; ACORN, WHO IS ACORN? (stating that ACORN has "[t]aken a leadership role in more than a dozen jobs and living wages campaigns, including victories in Chicago, Cook County, Boston, Oakland, Detroit, Minneapolis, and St. Paul"), at [http://www.acorn.org/who\\_are\\_we.html](http://www.acorn.org/who_are_we.html) (last visited Jan. 7, 2002); see also ACORN, LIVING WAGE CAMPAIGNS: AN ACTIVIST'S GUIDE TO BUILDING THE MOVEMENT FOR ECONOMIC JUSTICE (2d ed. 2001), available at <http://www.laborstudies.wayne.edu/livingwage.html>. The New Party has also played a prominent national role in supporting living wage campaigns. See POLLIN & LUCE, *supra* note 6, at 8.

328. See ACORN, *supra* note 326:

When subsidized employers are allowed to pay their workers less than a living wage, tax payers end up footing a double bill: the initial subsidy and then the food stamps, emergency medical, housing and other social services low wage workers may require to support themselves and their families even minimally.

*Id.*

329. See Winton Pitcoff, *Closing the Wage Gap*, 99 SHELTERFORCE ONLINE, May-June 1998:

[C]oalitions of community groups, labor unions, and some local government officials in cities around the country are campaigning together to pass living-wage ordinances requiring companies that do business with or receive subsidies from the city to fix a higher minimum wage for their employees, often one tied to an annual salary equal to the federal poverty line

*Id.*, at <http://nhi.org/online/issues/99/pitcoff.html>; see also Jared Bernstein, *The Living Wage Movement: Pointing the Way Toward the High Road*, COMMUNITY ACTION DIG., Spring 1999, available at [http://epinet.org/webfeatures/viewpoints/LW\\_movement.html](http://epinet.org/webfeatures/viewpoints/LW_movement.html).

330. See POLLIN & LUCE, *supra* note 6, at 8 (noting that one of the goals of the Los Angeles living wage campaign, as stated by the director of the Los Angeles Living Wage Coalition, was to "develop a tool for union organizing"); ZABIN & MARTIN, *supra* note 326, at 23 ("By linking their policy campaigns to new strategies for constituency organizing, these labor and community alliances are creating avenues for popular participation and education that help their policy agendas succeed while they build unions and community organizations."); ACORN, *supra* note 326, ("Living Wage campaigns also provide opportunities for organizations that work to build a mass base of low income or working people to join-up, organize, and mobilize new members."). Carol Zabin and Isaac Martin assert that "the most effective initiatives are those that advance living wage ordinances as part of a broader agenda for economic justice, and establishing ongoing organizations to sustain community-labor policy campaigns." ZABIN & MARTIN, *supra* note 326, at 1. Living wage advocates have also sought to reduce the privatization of public sector employment, by eliminating the gap between unionized public jobs and nonunionized private contractors. See CENTER FOR COMMUNITY CHANGE, *supra* note 326.

331. See CENTER FOR COMMUNITY CHANGE, *supra* note 326 ("In Baltimore, BUILD (a city-wide coalition of churches and community groups, affiliated with the Industrial Areas

cities, counties, and school districts have passed living wage ordinances.<sup>332</sup> Although these ordinances vary in their wage level, scope of coverage, and types of employer exemptions,<sup>333</sup> they share the common feature of requiring businesses that have a fiscal relationship with a local governmental entity to pay their employees at or above a designated living wage floor.<sup>334</sup> Thus, the living wage requirement applies “only to employers who receive contracts, grants, loans, tax subsidies, lease abatements, bond financing, enterprise zone credits, or other financial assistance from the city or county which enacted the ordinance.”<sup>335</sup>

There is a growing body of research suggesting that living wage policies have significantly contributed to poverty alleviation in many cities, conferring benefits on low-income workers that outweigh the costs to covered employers.<sup>336</sup> For example, in their comprehensive living wage study,<sup>337</sup>

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Foundation), working together with AFSCME [American Federation of State, County, and Municipal Employees], was able to push through a living wage ordinance in December 1994.”); ROBERT POLLIN & MARK BRENNER, *ECONOMIC ANALYSIS OF SANTA MONICA LIVING WAGE PROPOSAL 177 (2000)* (“The ordinance there stipulated that firms holding service contracts with the city pay a minimum wage that began at \$6.10 an hour in 1996, rising to \$7.70 an hour by 1999. After 1999, Baltimore’s living wage minimum would rise in step with inflation.”).

332. See POLLIN ET AL., *supra* note 331, at 177; see also ACORN, *LIVING WAGE SUCCESSES: A COMPILATION OF LIVING WAGE POLICIES ON THE BOOKS* (Oct. 2000), at <http://www.livingwagecampaign.org/LivingWageWins.htm> (last visited Jan. 12, 2002).

333. See Spain & Wiley, *supra* note 324, at 256-57. Selena Spain and Jean Wiley compare the elements of 17 different living wage ordinances. The ordinances included in their study, conducted in 1998, had wage levels that ranged from \$6.50 per hour in Duluth, Minnesota, to \$10.00 per hour in Santa Clara, California. See *id.* at 253. The policies offer different constellations of benefits and are triggered by different types of financial arrangements. For example, some apply only to employers holding construction and service contracts, while others apply to any employers that receive any type of public subsidy over a specified threshold. See *id.* at 256.

334. See CENTER FOR COMMUNITY CHANGE, *JOBS*, *supra* note 257, at 15 (“A living wage policy mandates a guaranteed minimum wage for employees of companies that receive some type of subsidy from local government, such as a tax break or revenue bond financing. It may also be applied to companies that have contracts with the city or state to perform services.”). Note that living wage ordinances differ from federal and state minimum wage laws, which apply blanket statutory minimums, and prevailing wage laws, including the Davis-Bacon Act, which require that construction workers employed under government contracts receive the prevailing wage for their occupation category. See Spain & Wiley, *supra* note 324, at 253.

335. Spain & Wiley, *supra* note 324, at 253.

336. See, e.g., POLLIN & LUCE, *supra* note 6, at 22:

In short, municipal living wage policies are effective at delivering higher living standards for low-wage workers and their families; reducing government subsidy payments to these working families; and lowering turnover and absenteeism for firms with high concentrations of low-wage workers. At the same time, . . . the costs of living wage programs can be readily diffused among firms, consumers, and municipal governments such that these costs need not be burdensome for any affected group.

*Id.*

Pollin and Luce found that the average worker under the policies considered would receive an increase in pretax income of over thirty percent,<sup>338</sup> while most firms would experience wage and benefit increases of less than one percent of their total production costs.<sup>339</sup> Studies of living wage policies in Baltimore,<sup>340</sup> San Francisco,<sup>341</sup> Detroit,<sup>342</sup> and Santa Monica<sup>343</sup> arrived at similar conclusions. Additionally, several analyses indicate that the enactment of living wage policies does not produce significant negative economic consequences in terms of workforce reduction, business relocation, and increased municipal costs.<sup>344</sup>

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337. In this study, Pollin and Luce evaluate three types of living wage proposals that use different criteria to determine employer coverage. The first type, based on Milwaukee's ordinance, only applies to businesses holding certain types of service contracts with the city. *See id.* at 16. The second, based on the Los Angeles model, has a more expansive application, covering not only service contractors, but also "firms receiving large city subsidies as well as firms holding concession agreements with the city." *Id.* Finally, they discuss geographically targeted policies, such as the failed Denver and Houston ordinances, which would apply to all employers within the city limits. *See id.* at 16-17.

338. *See POLLIN & LUCE, supra* note 6, at 20.

339. *See id.* at 17.

340. *See* CHRISTOPHER NIEDT, GREG RUITERS, DANA WISE & ERICA SCHOENBERGER, THE EFFECTS OF THE LIVING WAGE IN BALTIMORE 1-2 (Economic Policy Institute, Working Paper No. 119, 1999) (finding that, for twenty-six city contracts that could be directly compared before and after the Baltimore living wage ordinance went into effect, the aggregate cost increase to the city amounted to 1.2%; further indicating that the ordinance directly affected approximately 1500 workers), available at <http://www.lights.com/epi/virlib/WorkPapers/1999/effectsof.PDF>.

341. *See* MICHAEL REICH, PETER HALL & FIONA HSU, LIVING WAGES AND THE SAN FRANCISCO ECONOMY: THE BENEFITS AND THE COSTS 2-3 (finding that the proposed San Francisco ordinance would provide approximately 12,000 low-wage workers an additional \$50.3 million in wages and \$11.2 million in health benefits each year, while imposing \$31 million in costs on covered service contractors), at <http://socrates.berkeley.edu/~iir/files/reich-old.PDF> (June 1999).

342. *See* DAVID REYNOLDS, RACHEL PEARSON & JEAN VORTKAMPF, THE IMPACT OF THE DETROIT LIVING WAGE ORDINANCE 1-2 (Sept. 21, 1999) (concluding that over one-half of employers covered by living wage law would incur cost increases of under 1% and that 85% of the approximately 2300 covered workers would experience wage gains of \$1,312 to \$4,439 a year), at <http://laborstudies.wayne.edu/report.pdf> (last visited Jan. 12, 2002).

343. *See* POLLIN ET AL., *supra* note 331, at 4-7 (finding that the Santa Monica living wage would have a significant positive effect on covered employee wages, while causing only small cost increases for the majority of affected businesses (2% of gross revenues); further finding that the minority of businesses experiencing higher cost increases (10% of gross revenues) would likely be able to absorb costs through higher prices, modest one-time reductions in profit, or productivity increases). *But see* RICHARD H. SANDER, E. DOUGLASS WILLIAMS & JOSEPH DOHERTY, AN ECONOMIC ANALYSIS OF THE PROPOSED SANTA MONICA LIVING WAGE (Sept. 7, 2000) (arguing that the Santa Monica Coastal Zone Proposal "would be unwise, imprudent, and ineffective in achieving many of its supporters' goals"), at <http://www.law.ucla.edu/livingwage2.html> (last visited Jan. 12, 2002).

344. *See* POLLIN & LUCE, *supra* note 6, at 112-35; *see also* REYNOLDS ET AL., *supra* note 342, at 1-2 (finding that Detroit's living wage law would have negligible effect on city

CED lawyers have begun to play increasingly important roles in promoting the expansion of living wage protections.<sup>345</sup> Lawyers' technical expertise and familiarity with the interpretation of complex statutory language make them critical resources for living wage coalitions. For instance, at the inception of a living wage drive, lawyers can play a role in the development of campaign strategy, explaining technical aspects of living wage law to community members,<sup>346</sup> counseling groups on relevant election law issues, and advising organizers on the legality of planned protest actions.<sup>347</sup> As the campaign progresses, lawyers can also advise community-based coalitions on the crucial deal points of living wage negotiation—the designated wage level, the definition of public subsidy triggering the application of living wage requirements, the scope of exemptions for small businesses or nonprofit organizations, the duration of coverage, and the mechanisms for targeting low-income workers.<sup>348</sup> Further, CED lawyers, who are trained in writing

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budget and would be unlikely to negatively alter employment or investment patterns); MARK WEISBROT & MICHELLE SFORZA-RODERICK, PREAMBLE CENTER FOR PUBLIC POLICY, BALTIMORE'S LIVING WAGE LAW: AN ANALYSIS OF THE FISCAL AND ECONOMIC COSTS OF BALTIMORE CITY ORDINANCE 442 (1996) (finding that the cost of city contracts actually declined in inflation-adjusted dollars after the Baltimore living wage law was implemented and that contractors did not reduce their workforces); CHRIS BENNER & RACHEL ROSNER, WORKING PARTNERSHIPS, LIVING WAGE: AN OPPORTUNITY FOR SAN JOSE (Aug. 1998) (concluding that "most, if not all, of the increased labor costs can be absorbed by firms themselves, without having to pass on the costs to the City"), at <http://www.atwork.org/wp/lw/index.html> (last visited Jan. 12, 2002).

345. See Spain & Wiley, *supra* note 324, at 266 ("Legal services programs can play an indispensable role in the push for livable wages. They are able to decipher the language of local living-wage ordinances, and they have an intimate knowledge of the very constituency that these ordinances assist: poor people."). Legal services lawyers within LSC-funded organizations have been able to support living wage movements by making sure that their advocacy does not run afoul of LSC restrictions on attempting to influence legislation. See 45 C.F.R. § 1612.3(a)(1-2) (2001).

346. See Spain & Wiley, *supra* note 324, at 266 ("[L]egal services staff may be asked to attend community meetings to explain policy or to attend consultative meetings with several other attorneys to verify that the ordinance language is legally correct or that it is, to the extent possible, fully meeting the needs of the low-income population.").

347. See, e.g., Steve Bachmann, *Lawyers, Law, and Social Change*, 13 N.Y.U. REV. L. & SOC. CHANGE 1, 22 (1984-85).

348. According to ACORN, the critical elements of a living wage ordinance are wage level, scope of coverage, definition of covered workers, thresholds for coverage, monitoring, and duration of coverage. In addition, there might be possible "add-ons," such as wage-indexing, health benefits, and local hiring, as well as possible exemptions for nonprofits, employers already covered by prevailing wage laws, and hardship candidates. See ACORN, ELEMENTS OF A LIVING WAGE ORDINANCE, at <http://www.livingwagecampaign.org/ordinance.htm> (last visited Jan. 7, 2002); see also Spain & Wiley, *supra* note 324, at 254, 261-62; ZABIN & MARTIN, *supra* note 326, at 3-4. Effective advocacy has resulted in the implementation of innovative living wage provisions that require employers to enter into first source hiring agreements and inform workers of their eligibility for the Earned Income Tax Credit. See Spain & Wiley, *supra* note 324, at 263-65.

sophisticated corporate agreements, can use their drafting skills to translate negotiation points into appropriate statutory provisions and close any loopholes that would weaken worker protections.<sup>349</sup> CED lawyers can also play a critical part in monitoring living wage compliance, particularly by becoming involved in community oversight committees that guide city staff in living wage implementation.<sup>350</sup>

Successful living wage advocacy in Boston and Los Angeles highlights how CED lawyers have collaborated with other community activists to improve the economic conditions of the working poor. The Boston Jobs and Living Wage Ordinance,<sup>351</sup> passed in 1997, was the result of a coordinated effort of grassroots advocates, led by ACORN, the AFL-CIO, and Greater Boston Legal Services (GBLS).<sup>352</sup> At the inception of the campaign, GBLS attorneys worked closely with ACORN to develop a draft living wage proposal. Once the draft was finalized, the organizers and legal services lawyers, in conjunction with AFL-CIO representatives, engaged in intensive negotiations with a coalition of business leaders and local political officials that culminated in the passage of the ordinance, which requires any for-profit employer who has at least twenty-five full-time equivalent workers and a service contract of more than \$100,000 with the city to pay the living wage rate.<sup>353</sup> To monitor

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349. See Spain & Wiley, *supra* note 324, at 266 (“In cities across the country, legal services programs have been approached by living-wage advocates for legislation-drafting or technical assistance to ensure that a draft ordinance contains clear and effective language.”).

350. See *id.* Poverty lawyers have also been important in litigation efforts designed both to defend and to enforce living wage ordinances. See Murray, *supra* note 324, at 27 (describing the work of Paul Sonn of the Brennan Center for Justice at the New York University School of Law in defending St. Louis’ living wage law). This type of legal advocacy is becoming particularly important as living wage opponents are increasingly turning to legal challenges to defeat popularly elected living wage ordinances. See *id.* at 27; see also Telephone Interview with Paul Sonn, Attorney, Brennan Center for Justice at New York University School of Law (Oct. 1, 2001) (on file with author).

351. See BOSTON, MASS., ORDINANCES, ch. XXIV, §§ 24-1 to -14 (2001).

352. See Telephone Interview with Monica Halas, Attorney, Greater Boston Legal Services (Feb. 17, 2000) (on file with author) [hereinafter Halas Interview].

353. See CITY OF BOSTON JOBS AND LIVING WAGE ORDINANCE, THE LIVING WAGE DIVISION, COVERED EMPLOYEE LIVING WAGE FACT SHEET (on file with author); see also *Boston’s Living Wage Takes Effect—Includes Hiring Hall Requirements for Recipients of Corporate Subsidies*, 11 ORGANIZING: NEWSL. ON JOBS, TRANSP. & WELFARE REFORM ORGANIZING (Dec. 1998) (detailing the requirements of the Boston Jobs and Living Wage Ordinance) [hereinafter *Boston’s Living Wage Takes Effect*], at <http://www.communitychange.org/organizing/boston11.htm> (last visited Jan. 12, 2002). The ordinance also applies to nonprofit employers with over one hundred full-time-equivalent employees and a service contract of over \$100,000 from the city, as well as any subcontractor with a subcontract of \$25,000 or more from a covered employer. See COVERED EMPLOYEE LIVING WAGE FACT SHEET, *supra*. The wage rate is indexed annually on July 1 based on the federal poverty threshold for a family of four, or 110% of the federal or state minimum wage, whichever is higher. See BOSTON, MASS., ORDINANCES, ch. XXIV, § 24-6.



living wage implementation, a Citizens Assistance Advisory Committee was established with guaranteed seats for ACORN and labor representatives.<sup>354</sup>

The Los Angeles Alliance for a New Economy (LAANE) played an instrumental role in passing the Los Angeles living wage ordinance in 1997.<sup>355</sup> Created in the early 1990s by the Hotel Employees and Restaurant Union Local 11, LAANE forged a coalition out of grassroots organizations like Action for Grassroots Empowerment and Neighborhood Development Alternatives (AGENDA), faith-based groups such as Clergy and Laity United for Economic Justice, labor leaders from the Los Angeles County Federation of Labor, and worker representatives. This coalition mounted a city-wide campaign to “improve incomes and support unionization of the industry’s low-wage work force, which is overwhelmingly immigrant, and significantly Latina and Asian-American.”<sup>356</sup> The campaign, which relied on grassroots mobilization, policy advocacy, and media pressure, resulted in the enactment of a living wage law that requires any employer with a city contract, concession agreement, or subsidy of more than \$100,000 to pay the designated wage minimum, which is adjusted annually.<sup>357</sup> LAANE has continued to expand its living wage advocacy, currently working to pass a policy in Santa Monica, a separately incorporated city in Los Angeles County, that would apply living wage requirements to all employers within a specified geographic zone irrespective of whether they hold a government contract.<sup>358</sup> Legal advocacy has been an important part of LAANE’s living wage efforts.<sup>359</sup> In particular, lawyers on

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354. See Halas Interview, *supra* note 352; see also *Boston’s Living Wage Takes Effect*, *supra* note 353.

355. See L.A., CAL., ADMIN. CODE, art. 11, §§ 10.37-.38.7 (2001). Through June 30, 2002, the living wage rate is set at \$7.99 per hour plus \$1.25 per hour in health benefits. See CITY OF LOS ANGELES, CURRENT AND PRIOR LIVING WAGE RATES (Jul. 5, 2001), available at [http://www.lacity.org/cao/Contractor\\_Enforcement/Wage\\_Rates.PDF](http://www.lacity.org/cao/Contractor_Enforcement/Wage_Rates.PDF) (last visited Jan. 12, 2002).

356. ZABIN & MARTIN, *supra* note 326, at 9; see also Hany Khalil & Sandra Hinson, *The Los Angeles Living Wage Campaign*, in PUBLIC SUBSIDIES, PUBLIC ACCOUNTABILITY: HOLDING CORPORATIONS TO LABOR AND COMMUNITY STANDARDS 18 (1998).

357. See L.A., CAL., ADMIN. CODE, art. 11, § 10.37.2. When enacted, it was estimated that the Los Angeles ordinance applied to over 7000 workers. See POLLIN & LUCE, *supra* note 6, at 96.

358. See SANTA MONICANS ALLIED FOR RESPONSIBLE TOURISM, SMART HISTORY, at <http://www.laane.org/smart/smarthistory.htm> (last visited Jan. 7, 2002); see also Nancy Cleland, *Council Orders New Living Wage Law*, L.A. TIMES, Mar. 29, 2001, at B5; Monte Morin, *Battle over Wages Generates Dueling Santa Monica Plans*, L.A. TIMES, April 19, 2000, at B1; Gina Piccalo, *Activists Savor Victory, Expect Fight to Go On*, L.A. TIMES, Nov. 9, 2000, at B1; Gina Piccalo, *Anti-Living Wage Measure Is Put on Santa Monica Ballot*, L.A. TIMES, Aug. 3, 2000, at B1. Although LAANE’s efforts in Santa Monica received a boost when the City Council voted to support the ordinance, the issue is far from settled, as business opponents have recently filed papers to initiate a referendum against the measure. See Murray, *supra* note 324, at 27.

359. See Zucker Interview, *supra* note 306.

LAANE's staff have worked with other labor and legal services attorneys to negotiate and draft a range of living wage policy provisions while monitoring ongoing compliance issues.

By bringing together a broad coalition of economic justice activists, the living wage movement has succeeded in creating an income floor in many cities that has raised a significant number of workers out of poverty. As the movement continues to grow, it has become one of the flash points of progressive activism, mobilizing disparate constituencies in support of worker rights and union organizing.<sup>360</sup>

B. *Worker Cooperatives: Creating Alternative Spaces for Democratic Action*

CED's renewed commitment to economic justice is also evident in the type of business development work that advocates are beginning to undertake. In particular, lawyers working at the grassroots level are shifting their attention away from the traditional emphasis on commercial projects and small business programs, and are focusing greater resources on the development of worker cooperative businesses.<sup>361</sup> This shift reflects a changing strategic

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360. Seeking to consolidate past victories and expand the reach of living wage coverage, activists are charting a new agenda. For instance, the Progressive Los Angeles Network has advocated that:

5. The City and County should expand living wage laws to:
  - cover all workers providing government-funded and related services (i.e. home health care workers).
  - increase wages and benefits to reflect the true cost of living in L.A.
  - create group plans or publicly supervised health plans for smaller contractors and other small businesses covered by living wage ordinance, administered by a city department or a public/private partnership serving as a buyer.
  - create economic development “Zones” in which all private employers of more than 50 employees are covered by living wage requirements.
6. The City should expand its living wage law to apply to all tenants of properties funded by the Community Redevelopment Agency.
7. The County should expand its living wage law to:
  - cover businesses that utilize federal and state funds controlled by the county government.
  - apply to temporary and part-time workers.

PROGRESSIVE LOS ANGELES NETWORK, *supra* note 306, at 4-5.

361. For a discussion of cooperatives, see generally FRANK ADAMS & GARY B. HANSEN, *PUTTING DEMOCRACY TO WORK: A PRACTICAL GUIDE FOR STARTING AND MANAGING WORKER-OWNED BUSINESSES* (1992); WILLIAM ALVARADO-GREENWOOD, STEVEN HABERFELD, LLOYD C. LEE, STAFFORD W. KEEGIN & DAVID H. KIRKPATRICK, NATIONAL ECONOMIC DEVELOPMENT AND LAW CENTER, *ORGANIZING PRODUCTION COOPERATIVES: A STRATEGY FOR COMMUNITY ECONOMIC DEVELOPMENT* (1978); KIRK BAKER & ANTHONY NAKAZAWA, *ORGANIZING FOR BUSINESS AS A COOPERATIVE* (1995); ALASTAIR CAMPBELL, *THE DEMOCRATIC CONTROL OF WORK* (1969); CHRIS CORNFORTH, ALAN THOMAS, JENNY LEWIS & ROGER SPEAR, *DEVELOPING SUCCESSFUL WORKER CO-OPERATIVES* (1988); DAVID P. ELLERMAN, *WHAT IS A WORKER COOPERATIVE?* (1984); BRETT FAIRBARN, JUNE BOLD, MURRAY FULTON, LOU HAMMOND KETILSON & DANIEL ISH, *CO-OPERATIVES AND*

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understanding of CED: No longer merely conceptualized as a vehicle for community-based job creation, the new CED model also seeks to energize grassroots political activism. By offering a forum for practicing democratic decision making and cultivating community organizing, worker cooperatives advance the twin goals of job creation and political engagement.<sup>362</sup>

The potential of cooperatives as a catalyst for community action is a function of their unique structure, which dissolves the labor-capital division characteristic of traditional business forms.<sup>363</sup> Based on the famous

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COMMUNITY DEVELOPMENT: ECONOMICS IN SOCIAL PERSPECTIVE (1991); CHRISTOPHER EATON GUNN, WORKERS' SELF-MANAGEMENT IN THE UNITED STATES (1984); GARY B. HANSEN, LESSONS FROM THE PAST: SELECTED READINGS ON THE SYSTEMATIC DEVELOPMENT OF WORKERS' COOPERATIVES TO GENERATE EMPLOYMENT AND INCOME (1993); GARY B. HANSEN, E. KIM COONTZ & AUDREY MALAN, STEPS TO STARTING A WORKER CO-OP (1997); GARY B. HANSEN & E. MOGENSEN, WORKING TOGETHER TO CREATE JOBS: A GUIDE TO WORKER-OWNED COOPERATIVE DEVELOPMENT (1994); PETER JAN HONIGSBERG, B. MAMOROFF & J. BEATTY, WE OWN IT: STARTING AND MANAGING COOPS, COLLECTIVES, AND EMPLOYEE-OWNED VENTURES (1982); LEN KRIMERMAN & FRANK LINDENFELD, WHEN WORKERS DECIDE: WORKPLACE DEMOCRACY TAKES ROOT IN NORTH AMERICA (1992); MARY MELLOR, JANET HANNAH & JOHN STIRLING, WORKER COOPERATIVES IN THEORY AND PRACTICE (1988); JOHN PEARCE, RUNNING YOUR OWN COOPERATIVE (1984); STIMULATING COOPERATIVE ECONOMIC DEVELOPMENT IN LOW-INCOME COMMUNITIES (Patricia Logan et al. eds., 1981); WORKER COOPERATIVES IN AMERICA (Robert Jackall & Henry M. Levin eds., 1984); WORKER OWNERSHIP DEVELOPMENT FOUNDATION, STARTING A WORKER COOPERATIVE: AN INTRODUCTION (1985).

362. See Cummings, *supra* note 235, at 189:

[C]ooperatives present an opportunity to challenge free market values and build democratic community institutions, while still providing sustainable jobs for low-income workers. In this way, cooperative development is consistent with an emerging model of CED practice that departs from conventional market-based strategies and instead seeks to use CED to promote grassroots community mobilization and political action.

*Id.*; see also Peter Pitegoff, *Organizing Worker Cooperatives*, 7 L. & POL'Y 45, 49 (1985) ("The democratic corporation, one artifact in a changing society, embodies a rare synthesis of economic development, democratic values, and the law."); Lewis D. Solomon & Melissa B. Kirgis, *Business Cooperatives: A Primer*, 6 DEPAUL BUS. L.J. 234, 235 (1994):

The establishment of cooperatives is expected to create new jobs in all economic sectors and offer greater economic stability in communities around the United States. Worker cooperatives can also be expected to improve the long-term relationship between labor and management, increase worker satisfaction and productivity, and strengthen political equality and democracy.

*Id.*

363. See David Ellerman & Peter Pitegoff, *The Democratic Corporation: The New Worker Cooperative Statute in Massachusetts*, 11 N.Y.U. REV. L. & SOC. CHANGE 441, 463 (1982-83):

The worker-members of a worker cooperative are really neither "employees" nor "owners." While remaining "employees" for some legal purposes (for example, Social Security), the worker-members of a worker cooperative are not employees in the sense of sellers of labor. They sell not their labor but the fruits of their labor. Instead of being "employees" of a worker cooperative corporation, the workers are the corporation; it is their legal embodiment. The workers, in their corporate body, own the positive fruits of their labor (the produced outputs) and are liable for the negative fruits of their labor (the exhausted nonlabor inputs). . . . The worker-members are also not "owners" because membership rights are not

Mondragon model of industrial cooperatives,<sup>364</sup> the worker cooperative displaces the conventional mode of business ownership with a structure in which the right to vote and receive net income are “attached to the functional role of working in the firm.”<sup>365</sup> First codified in the United States by the 1982 Massachusetts Employee Cooperative Corporations Law,<sup>366</sup> the Mondragon-style cooperative severs decision-making power from capital ownership, ensures open access to cooperative membership, and rewards worker participation over stock accumulation.

Cooperatives are built upon three technical features that distinguish them from other business forms: membership, internal capital accounts, and patronage allocations. First, a cooperative is comprised of worker-members, who vote their membership shares on a one-person, one-vote basis.<sup>367</sup> The membership structure thus implements the concept of democratic ownership by conferring voting rights on workers, rather than non-employee investors, and limiting each member to one vote irrespective of the amount of share ownership.<sup>368</sup> Second, a system of internal capital accounts further reinforces the separation of membership rights and stock ownership. In particular, as cooperative profits are allocated to the internal capital accounts,<sup>369</sup> individual members may accrue different ownership stakes without gaining additional voting rights.<sup>370</sup> This internal account structure also ensures open access to

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property rights.

*Id.*

364. *See id.* at 443; *see also* Richard Abel, *A Socialist Approach to Risk*, 41 MD. L. REV. 695, 719 (1982).

365. Ellerman & Pitegoff, *supra* note 363, at 444. Based on this structural feature, David Ellerman and Peter Pitegoff conclude that “[t]he worker cooperative is thus an industrial democracy, analogous to a political democracy, where the voting and other citizenship rights are personal rights attached to the functional role of residing in the community. In a worker cooperative, labor (inclusive of all who work in the firm) hires capital.” *Id.* at 444.

366. *See id.* at 452. Lewis Solomon and Melissa Kirgis note that the Massachusetts statute, drafted by the Industrial Cooperative Association, created a Mondragon-style model for structuring cooperatives that was also adopted by Connecticut, New York, Oregon, and Washington. Solomon & Kirgis, *supra* note 362, at 238. They also point out that other states with cooperative statutes, including Alaska, California, Illinois, and Texas, did not follow the Mondragon model, instead opting for a more traditional corporation structure. *Id.*

367. *See* Ellerman & Pitegoff, *supra* note 363, at 454.

368. *See id.* at 460.

369. *See* Solomon & Kirgis, *supra* note 362, at 259.

370. *See* Ellerman & Pitegoff, *supra* note 363, at 446:

In the Mondragon model, each member’s internal capital account represents the capital value which is due back to the member after a fixed rollover period or after retirement. The account is quite separate from the membership rights. Workers, depending on their seniority and pay-rate, might have quite differing amounts in their accounts and yet they retain the same membership rights, e.g., equal voting rights.

*Id.* at 446. This model deviates from that of traditional corporations, where shareholders who accrue greater equity interests also gain additional voting rights.

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cooperative membership by allowing the cooperative to keep the price of membership low enough so that new workers may afford to become members.<sup>371</sup> Finally, the system of patronage allows the cooperative to allocate profits based on worker participation. Thus, rather than distributing profits according to the number of shares owned by an outside investor, the cooperative can appoint “earnings and losses to members on the basis of their relative amount of work, usually measured by hours of work or total wages.”<sup>372</sup>

Incorporating the principles of democratic control, open membership, and equitable economic participation,<sup>373</sup> worker cooperatives provide a vehicle for CED practitioners to promote the type of grassroots organizing and community-based leadership development absent from the traditional business model.<sup>374</sup> While offering a method for creating jobs in poor communities, cooperative development also establishes sites of collective action that can grow into critical loci of community change.<sup>375</sup> Cooperative formation fosters political consciousness among participants by challenging the dominant conception of worker status and capital ownership.<sup>376</sup> Thus, the incipient organizing structure and politicized nature of cooperatives provide the foundations for mobilizing low-income constituencies and connecting grassroots efforts to the larger economic justice movement.<sup>377</sup>

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371. See Solomon & Kirgis, *supra* note 362, at 259; see also Ellerman & Pitegoff, *supra* note 363, at 465:

The Massachusetts solution is to allow a worker cooperative to split off the net worth or net book value from the shares using a system of internal capital accounts, with one account for each member recording that member's share of the net worth. When a person leaves the firm or retires, the balance in his or her account is paid out by the firm over a period of years. A new worker does not have to individually pay off a retiring worker—as would be the case if a new worker had to buy a share with the accumulated value from a retiring member.

*Id.*

372. Ellerman & Pitegoff, *supra* note 363, at 455; see also Cummings, *supra* note 235, at 202; Solomon & Kirgis, *supra* note 362, at 257-59.

373. See HANSEN ET AL., STEPS TO STARTING A WORKER CO-OP, *supra* note 361, at 6.

374. See Pitegoff, *supra* note 362, at 48 (“In the case of worker cooperatives, the legal work generally and the worker co-op statute in particular are inextricably tied to local organizing.”); see also CENTER FOR COMMUNITY CHANGE, JOBS, *supra* note 257, at 25 (“[C]o-ops are providing one model for the kind of small-scale economic development that can complement an organizing agenda, without diverting time and resources from it.”).

375. See Cummings, *supra* note 235, at 189.

376. See Stoecker, *supra* note 31, at 16 (“Co-ops can be empowering, employee-owned businesses can be empowering, and other community-controlled economic and housing alternatives can be empowering. Developing those alternatives cannot happen without organizing the community because those alternatives threaten the power of capitalists and thus depend on community cooperation and collective action.”).

377. Some analysts have argued that the mere creation of cooperatives, by itself, is unlikely to produce large-scale transformations in the economic order, although their presence could provoke incremental change. See Stuart Henry, *Community Justice, Capitalist Society, and Human Agency: The Dialectics of Collective Law in the Cooperative*, 19 L. & SOC'Y REV. 303, 324 (1985) (“Alternative institutions and their associated normative

Cooperative development has emerged as an important component of industrial retention strategies and grassroots immigrant worker organizing. Beginning in the 1980s, the formation of worker cooperatives gained attention as a mechanism for retaining high-paying manufacturing jobs in declining Rustbelt regions faced with threatened plant shutdowns and failing small businesses.<sup>378</sup> Part of a broader strategy designed to stabilize manufacturing jobs for workers with limited skills and education,<sup>379</sup> employee buy-outs of industrial concerns have been successful in contexts where well-organized worker groups have persuaded corporate officials to avoid the costs and negative publicity of plant closings.<sup>380</sup> The InterValley Project (IVP), a network of community institutions in Massachusetts, Rhode Island, and Connecticut,<sup>381</sup> has been one of the most active organizations deploying cooperative-based job retention strategies.<sup>382</sup> Working to foster an organizing-centered model of democratic economic development, IVP's major accomplishments have included three successful employee buy-outs of local industries.<sup>383</sup>

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orders do not work transformations on capitalist structures and rule systems but instead interact with them in a dialectical way such that both the alternative system and the capitalist order are vulnerable to incremental reformulations.”).

378. See Ellerman & Pitegoff, *supra* note 363, at 448 (noting that “worker ownership has emerged as a response to plant closings and as a vehicle for positive economic development”). The seeds of the cooperative movement appear in diverse settings: “[W]orkers in a plant threatened with shutdown are trying to save their jobs by buying the company; retiring owners of small businesses are selling to their employees rather than to outside corporate buyers; unions and community organizations are trying to create new jobs through worker cooperative development.” Pitegoff, *supra* note 362, at 46.

379. See CENTER FOR COMMUNITY CHANGE, SAVING AND CREATING GOOD JOBS: A STUDY OF INDUSTRIAL RETENTION AND EXPANSION PROGRAMS 1 (1998) (discussing the theory behind industrial retention strategies).

380. See Ellerman & Pitegoff, *supra* note 363, at 449 (stating that, “[w]hile some [employee buy-out] attempts have been thwarted by inadequate financing options or by unwilling corporate sellers, others have actually been promoted by multinational corporations in attempts to divest marginal operations without the costs and negative publicity of plant closings”).

381. See InterValley Project Fact Sheet (on file with author):

The InterValley Project (IVP) is the organizing network of the Merrimack Valley Project (MVP), the Naugatuck Valley Project (NVP), the Pioneer Valley Project (PVP) and the Rhode Island Organizing Project (RIOP), based in Southern New England. These four organizations are patterned after the model pioneered by the Naugatuck Valley Project, which combines citizen action organizing and democratic economic development—worker-owned companies, cooperative housing and community land trusts—in regional organizations of congregations, labor union locals, tenant, community and small business groups.

*Id.*

382. See Galdston, *supra* note 32, at 3 (describing IVP's model for organizing employee buy-outs of existing firms).

383. See Galdston, *Regional Citizen Action*, *supra* note 318, at 4. IVP also established two employee-owned home health care companies, although both have since ceased operating.

More recently, community activists have begun to focus on cooperative development as a strategy to organize low-wage, predominantly immigrant workers in marginalized economic sectors.<sup>384</sup> In particular, advocates have helped to structure cooperatives comprised of domestic workers and day laborers in order to institutionalize some of the benefits of traditional unionization—job security, higher wages, and skill development—among workforce populations deemed otherwise “unorganizable.”<sup>385</sup> Although still small in number, immigrant worker cooperatives are receiving heightened attention among advocates in large urban centers in California, which have significant Latino immigrant populations. In Los Angeles, for instance, Strategic Actions for a Just Economy and the Coalition for Humane Immigrant Rights of Los Angeles have promoted the use of cooperatives in the context of domestic work and other immigrant-saturated industries, such as gardening and landscaping. By helping workers to create formal cooperative structures that consolidate bargaining power, these community organizations have taken initial steps to curb the most egregious forms of worker exploitation. Moreover, their efforts highlight how the innovative use of cooperatives can respond to the changing demographics of the urban low-wage workforce, strengthening the economic position of immigrant workers while planting the seeds of grassroots activism.<sup>386</sup>

CED lawyers can provide varied technical and legal assistance to facilitate the development of worker cooperatives.<sup>387</sup> Most significantly, lawyers are needed to advise workers on the appropriate legal structure for their

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384. See Cummings, *supra* note 235, at 187; Peggie R. Smith, *Organizing the Unorganizable: Private Paid Household Workers and Approaches to Employee Representation*, 79 N.C. L. REV. 45, 86-95 (2000).

385. See generally Smith, *supra* note 384 (discussing the barriers to organizing domestic workers); see also NANCY CONOVER, FRIEDA MOLINA & KARIN MORRIS, NATIONAL ECONOMIC DEVELOPMENT AND LAW CENTER, MUTUAL BENEFIT SERVICE SECTOR COOPERATIVES 2 (1992) (on file with author) (finding that cooperatives “in the service sector have been effective in improving employment opportunities, particularly for recent immigrant women with limited English language skills,” although noting that “the overwhelming majority of jobs created have been part-time, and it has proven very difficult for most ventures to offer fringe benefits”).

386. Although the potential of cooperatives to stimulate grassroots action remains unrealized, there are examples of cooperatives that have successfully fostered political activism. For instance, in Los Angeles, members of a cooperative established by SAJE have taken an active role in organizing community members around lead paint abatement in low-income housing. See Telephone Interview with Gilda Haas, Director, Strategic Actions for a Just Economy (Oct. 30, 2001) (on file with author).

387. It is important to emphasize that CED lawyers advising cooperatives typically work in interdisciplinary, grassroots contexts where they are required to employ a number of nontraditional skills, such as meeting facilitation, technical assistance coordination, and business planning. See Cummings, *supra* note 235, at 191-92; Pitegoff, *supra* note 362, at 48.

cooperative.<sup>388</sup> This decision is largely based on the availability of a state cooperative corporation statute,<sup>389</sup> although other considerations, including the legal status of the workers involved,<sup>390</sup> may affect the choice of entity. In the process of establishing the legal structure, lawyers must address a number of key organizational issues, including membership eligibility, standards for the acceptance and expulsion of members, capital structure, voting procedures, and governance protocols.<sup>391</sup> Once the cooperative is formed, CED attorneys can provide ongoing transactional support by responding to the full range of issues that arise in the course of business operations—ensuring corporate compliance, drafting and reviewing contracts and leases, and advising on tax, employment, and licensing issues. By cultivating the development of cooperative business initiatives in this way, CED lawyers can fuse job creation and grassroots organizing strategies to create alternative spaces for democratic action.

C. *Organizing-Based Jobs Initiatives: Using Legal Levers to Redistribute Economic Benefits*

Under the market-based approach to CED, the public sector has little direct involvement in job creation activities. Jobs are produced, under this model, through private sector expansion, which government entities facilitate through guaranteed loans, tax breaks, and other growth-promoting subsidies. However, as CED advocates increasingly turn away from this market approach, they are employing an organizing-based model of job creation that enlists the public sector in redistributing the benefits of business growth to low-income constituencies. Thus, instead of viewing government as a passive entity that simply calibrates incentives to encourage capital investment, coalitions of activists and poverty lawyers are applying pressure to force governmental actors to become partners in stimulating broader economic reforms. To do so, they are deploying organizing strategies around existing legal requirements that either mandate or strongly encourage job creation for poor workers. This emerging approach has focused on exacting greater community benefits from locally subsidized development projects, structuring job creation and retention plans under the auspices of federal laws, and establishing employment training programs upon the foundation of federal workforce development mandates.

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388. See Cummings, *supra* note 235, at 195; David Ellerman, *Workers' Cooperatives: The Question of Legal Structure*, in *WORKER COOPERATIVES IN AMERICA*, *supra* note 361, at 258 (Robert Jackall & Henry M. Levin eds., 1984).

389. See generally Solomon & Kirgis, *supra* note 362 (analyzing selected state cooperative statutes).

390. See Cummings, *supra* note 235, at 197, 203, 207-08.

391. See Solomon & Kirgis, *supra* note 362, at 239-77.



1. *Publicly subsidized local redevelopment.*

Building on the success of the living wage movement, coalitions of grassroots activists and lawyers have begun to use the existence of local business subsidies as a lever to expand the scope of economic benefits directed to low-income communities. These coalitions have applied organizing pressure to require that companies receiving public subsidies through the redevelopment process provide direct economic benefits to low-income communities.<sup>392</sup> Thus, in exchange for subsidies, developers are being required to provide community benefits packages, which, in addition to living wage provisions, typically include job training programs and community hiring agreements.

The structural features of redevelopment make it a target for community organizing and legal advocacy to enhance accessible job opportunities for low-income workers. Originally implemented as part of federally sponsored urban renewal programs, redevelopment has evolved into local programs administered under state enabling legislation.<sup>393</sup> Although the process varies by state, it is generally defined by the creation of local redevelopment agencies with broad powers to coordinate land assembly and financing for private development.<sup>394</sup> Redevelopment is typically undertaken with the goal of

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392. The Progressive Los Angeles Network's policy paper highlights the types of benefits community organizations are seeking from publicly subsidized businesses. According to the paper:

14. The City should require businesses that receive public subsidies to meet conditions and standards, including obligations to:

—Create a minimum number of new jobs, based on the amount of the subsidy granted and the size and potential of the project. (Moving jobs from a project in one part of the city to a new project in another part of the city should not count as a new job.)

—Hire a minimum percentage of new hires from the local neighborhood and low-income areas of the city.

—Exceed local, state, and federal environmental requirements.

—Not relocate out of LA for a minimum number of years.

PROGRESSIVE LOS ANGELES NETWORK, *supra* note 306, at 8-9.

393. *See* Quinones, *Redevelopment Redefined*, *supra* note 14, at 700-07.

394. *See id.* at 710:

[Within a project area, redevelopment agencies frequently] take property by eminent domain for site-assembly; issue bonds without voter approval by pledging revenue from leases, property and sales taxes, and a variety of other funding streams as a guarantee for repayment; sell property at less than fair market value; conduct toxic abatement; pay for infrastructure, parking, lighting, sewers, and grading; provide direct financial assistance including outright grants, loan guarantees, and low-interest loans; provide land use benefits such as density bonuses and easing of other land use regulations of general application; and encourage any sort of development or uses that it deems fit.

*Id.*; *see also* David F. Beatty, *Redevelopment*, in UNDERSTANDING DEVELOPMENT REGULATIONS 171 (Robert E. Merritt & Ann R. Danforth eds., 1994) (describing redevelopment in California as combining in a local redevelopment agency "the powers of land assembly and site preparation for private development, the ability to finance necessary public improvements, the authority to impose conditions and restrictions on the quality of the development of an area, and broad financing capabilities utilizing a variety of public and

facilitating business growth in zones designated as economically blighted.<sup>395</sup> As an incentive to developers to initiate projects in the zones, the redevelopment agency offers subsidies in the form of tax increment financing, tax abatements, grants and loans, and industrial revenue bonds.<sup>396</sup>

The legal connection between the allocation of public subsidies and the requirement of community revitalization has provided the “handle” to leverage job creation benefits for low-income constituencies affected by redevelopment. Drawing upon public concern about the “corporate welfare” aspect of redevelopment,<sup>397</sup> advocates have used organizing pressure—backed by the threat of legal action—to require publicly subsidized developers to implement job creation plans for poor workers.<sup>398</sup> In a recent example in Los Angeles, the Figueroa Corridor Coalition for Economic Justice—a group of community organizations, unions, and residents—successfully concluded an agreement with the developers of a billion-dollar downtown sports and entertainment district to adopt a community benefits plan. The plan, which was included in the master development agreement after lengthy negotiations, includes more than a million dollars for the creation and improvement of parks, a local hiring and job training program, a residential parking permit program, and a twenty percent affordable housing set-aside.<sup>399</sup> It also requires that at least seventy percent of an estimated 5,500 jobs to be created by the project pay a living

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private sources”); The National Economic Development and Law Center, *Facing the Local Redevelopment Agency*, 24 CLEARINGHOUSE REV. 1051, 1052-53 (1991) (discussing the stages of redevelopment in California).

395. See, e.g., CALIFORNIA DEBT ADVISORY COMMISSION, RECOMMENDED PRACTICES FOR CALIFORNIA REDEVELOPMENT AGENCIES 5-14 (1995).

396. See CENTER FOR COMMUNITY CHANGE, JOBS, *supra* note 257, at 9-10.

397. See CENTER FOR COMMUNITY CHANGE, JOB CREATION AND ECONOMIC DEVELOPMENT (1999) (“Campaigns around corporate welfare issues can provide opportunities for significant victories, as well as organizational expansion and leadership development. And they tend to be publicly popular because of widespread public mistrust or unease about corporations.”), at <http://www.communitychange.org/jobcreate.htm> (last visited Jan. 12, 2002); see also CENTER FOR COMMUNITY CHANGE, JOBS, *supra* note 257, at 10-11; GREG LEROY, NO MORE CANDYSTORE: STATES AND CITIES MAKING JOB SUBSIDIES ACCOUNTABLE (1994); Good Jobs First, *Good Jobs First*, at <http://www.goodjobsfirst.org/gjf.htm> (last modified Jan. 7, 2002).

398. See, e.g., CENTER FOR COMMUNITY CHANGE, *The Inner-city Worker's Center: Campaign for a Sustainable Milwaukee*, 10 ORGANIZING: NEWSL. ON JOBS, TRANSP. & WELFARE REFORM ORGANIZING, June-July 1998 (discussing the Jobs Access Task Force, which successfully campaigned to require living wage job creation for low-income residents of Milwaukee in connection with the construction of a convention center), at <http://www.communitychange.org/organizing/CSM10.htm>; see also Gerald P. López, *Economic Development in the “Murder Capital of the Nation,”* 60 TENN. L. REV. 685 (1993) (describing community mobilization and legal advocacy around East Palo Alto redevelopment plans).

399. See Lee Romney, *Community, Developers Agree on Staples Plan Deal*, L.A. TIMES, May 31, 2001, at A1.

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wage.<sup>400</sup>

Other organizations have used a similar approach to exact community benefits from publicly subsidized projects coordinated outside the umbrella of local redevelopment agencies. For example, the Legal Aid Foundation of Los Angeles worked with a coalition of community organizations and labor groups anchored by AGENDA to attach job creation conditions to a multi-billion dollar movie studio development that was to receive a subsidy package valued between \$70 and \$590 million.<sup>401</sup> Although the studio ultimately withdrew from the project, the coalition largely achieved its goals,<sup>402</sup> winning a commitment from the studio to fund a multimedia job-training academy for low-income workers and to make efforts to hire academy graduates. Similarly, the Alameda Corridor Jobs Coalition, in conjunction with a consortium of legal services providers, was able to gain a commitment from the developer of a \$2.4 billion railway transportation project to “train 1000 low-income corridor residents for construction trade and support jobs and to set aside thirty percent of all hours worked for those who completed the training.”<sup>403</sup>

Advocates have also used business subsidies as a basis for establishing first source hiring agreements, which generally require private companies that receive public monies to make efforts to hire local community residents.<sup>404</sup>

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400. *See id.*

401. *See* Nona Liegeois, Francisca Baxa & Barbara Corkrey, *Helping Low-Income People Get Decent Jobs: One Legal Services Program's Approach*, 33 CLEARINGHOUSE REV. 279, 286 (1999).

402. *See id.* at 287:

The goals of Metro Alliance and AGENDA for this project were to (1) create and get the subsidy recipients to fund job training targeted to specific skilled multimedia jobs; (2) secure a commitment from the studio to hire a certain percentage or number of training program graduates; (3) attach living-wage and good-tenant provisions to receipt of the subsidy; and (4) ensure community participation and oversight of the city's funding of the project.

*Id.*

403. *Id.* at 290; *see also* CENTER FOR COMMUNITY CHANGE, *The Alameda Corridor Jobs Coalition Hits a Gold Mine!*, 8 ORGANIZING: NEWSL. ON JOBS, TRANSP. & WELFARE REFORM ORGANIZING, Apr. 1998 (discussing the Alameda Corridor project, a 21-mile railway development that connects the Ports of Los Angeles and Long Beach to rail yards just south of downtown Los Angeles, and, as a result, cuts through several of the lowest-income neighborhoods in south Los Angeles), at <http://www.communitychange.org/organizing/Acjc8.htm>.

404. *See* Barbara Anderson, *First-Source Hiring Agreements*, ACCOUNTABILITY: NEWSL. OF BUS. INCENTIVES CLEARINGHOUSE, Mar. 1999:

First Source agreements vary in terms of program design, employer incentives, and the range of collaborating institutions. Three features characterize First Source programs: 1) they leverage jobs in the private sector through public incentives; 2) they share access to timely information on job opportunities; and 3) they establish formal mechanisms for referring and placing job seekers.

*Id.* at 2; William Schweke, *Linking Initiatives and Employment Programs*, ACCOUNTABILITY: NEWSL. OF BUS. INCENTIVES CLEARINGHOUSE, Mar. 1999:

Such agreements require private companies that receive public monies to agree to use the public sector (or its designated contractors) as the “first source” for job hires. The state or

Under most first source agreements, the city designates a job development agency to act as a clearinghouse for job applicants.<sup>405</sup> Publicly subsidized employers are required to consider applicants from the first source agency, who are typically low-income job seekers from disadvantaged neighborhoods.<sup>406</sup> Some first source arrangements require that businesses hire a specific percentage of their workers from the agency, while others only require that job openings be listed with the agency for a certain amount of time, giving local residents the first opportunity to access openings.<sup>407</sup> In the typical situation, the subsidized businesses are under no obligation to hire from the local job pool, although they must be able to show that they considered local workers as a precondition to hiring outside the first source agency.<sup>408</sup> Beginning with Portland in 1979,<sup>409</sup> several cities have passed ordinances that direct businesses to enter into first source agreements upon receipt of a public contract or some other form of government assistance.<sup>410</sup> Even in the absence of such ordinances, community organizations have successfully negotiated with developers to accept first source arrangements in order to receive redevelopment incentive packages.

In the context of publicly subsidized redevelopment, CED lawyers can draw upon their transactional skills to draft and review agreements that

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local government acts as the "job developer" on behalf of the private firm, identifying and screening potential workers, arranging training services, and so forth. The private company is under no obligation to hire these workers, but must interview them before seeking any other possible employees.

*Id.* at 1.

405. See CENTER FOR COMMUNITY CHANGE, JOBS, *supra* note 257, at 12.

406. See *id.*

407. See CENTER FOR COMMUNITY CHANGE, WHAT IS A FIRST SOURCE AGREEMENT?, at <http://www.communitychange.org/1stsource.htm> (1999).

408. For instance, under Berkeley's First Source program:

[the] employer retains all authority about whom to interview and all decision-making about which applicants, if any, to hire. A firm's only obligations to the city are to take a first look at the job candidates referred by First Source and, if none are hired, to give feedback about why they did not meet the employers' needs.

LYALL & SCHWEKE, *supra* note 250, at 38.

409. See CENTER FOR COMMUNITY CHANGE, JOBS, *supra* note 257, at 12.

410. See, e.g., LYALL & SCHWEKE, *supra* note 250, at 37-38 (discussing Berkeley's First Source, the city's "one-stop employment-referral program for local businesses," and noting that under "one major component of First Source, private employers make formal agreements with the city to contact the program first whenever they have job openings available, before looking elsewhere for job applicants"); FRIEDA MOLINA, CENTER FOR COMMUNITY CHANGE, MAKING CONNECTIONS: A STUDY OF EMPLOYMENT LINKAGE PROGRAMS 19-28 (1998) (reviewing features of employment linkage programs, including Berkeley's First Source); ACORN, WHO IS ACORN?, *supra* note 327, (stating that ACORN has "[s]ecured 'First Source' ordinances or agreements requiring developers to hire low-income unemployed residents in Miami, Washington, D.C., Bridgeport, Pittsburgh, Dallas, St. Louis, Little Rock and Des Moines").

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implement community benefit programs and local hiring commitments.<sup>411</sup> CED lawyers can also assist community organizing groups by explaining the steps involved in the redevelopment process, determining what requirements can legally be attached to public funding,<sup>412</sup> and identifying examples of successful redevelopment advocacy.<sup>413</sup> Finally, CED lawyers are often needed to establish nonprofit entities to act as implementing organizations for job training and placement programs that result from redevelopment agreements.<sup>414</sup> This type of advocacy facilitates the development of broad job creation standards while strengthening the capacity of grassroots coalitions.

2. *Federally sponsored employer linkage programs.*

In addition to tapping the job creation potential of locally subsidized redevelopment projects, CED lawyers have focused attention on leveraging jobs for low-income workers through existing federal mandates. In particular, advocates have used local hiring requirements embedded in federal programs to connect residents of poor communities to private sector employers. For legal services advocates, Section 3 of the Housing and Urban Development Act of 1968 has been a particularly important tool in establishing these types of employer linkages.<sup>415</sup>

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411. See Liegeois et al., *supra* note 401, at 285 (“Drafting or reviewing contracts, agreements, ordinances, or other documents that implement job-creation provisions is some of the most important legal work after information gathering and research.”). Skilled draftsmanship is a critical element in securing effective job creation agreements. For instance, the Center for Community Change has stressed the importance of incorporating “right to know” provisions, which require that companies file performance reports detailing the extent of compliance with subsidy requirements, and “claw back” clauses, which provide “that if the company fails to deliver on its application promises, the subsidy must be paid back in its entirety.” CENTER FOR COMMUNITY CHANGE, JOBS, *supra* note 257, at 11.

412. See Liegeois et al., *supra* note 401, at 285.

413. See BRAD J. CAFTEL, NATIONAL ECONOMIC DEVELOPMENT AND LAW CENTER, STRATEGIES ON WORKFORCE AND EMPLOYMENT DEVELOPMENT: ROLE OF LEGAL SERVICES PROGRAMS WORKING WITH COMMUNITY-BASED ORGANIZATIONS (1999) (on file with author).

414. See Liegeois et al., *supra* note 401, at 285, 290.

415. Housing and Urban Development Act of 1968, 12 U.S.C. § 1701u (2001). Although Section 3 has received heightened attention among legal services advocates seeking to expand job opportunities for low-income workers, there are other federal programs that contain similar employer linkages. See, e.g., Greg Volz & Brad Caftel, *Job Strategies in the Era of Welfare Reform: A Community-Based Model of Legal Services*, 33 CLEARINGHOUSE REV. 569, 570 (2000) (“Federal economic development programs such as empowerment zones, enterprise communities, brownfield development, and Section 3 (a provision found in the Housing and Urban Development Act of 1968), provide either tax incentives or require employers to hire residents from affected communities.”); see also TSE MING TAM & BRAD CAFTEL, NATIONAL ECONOMIC DEVELOPMENT AND LAW CENTER, SECURING JOBS FROM PUBLICLY SUPPORTED DEVELOPMENT (1999) (on file with author) (materials prepared from NLADA substantive law conference in Berkeley, Cal.) (mentioning Empowerment Zones, enterprise communities, brownfields, and military base closures as

Section 3 has emerged as a mechanism for requiring public housing authorities (PHAs) and other recipients of HUD funds to provide training, employment, and contracting opportunities for low- and very low-income persons.<sup>416</sup> Initially enacted in 1968,<sup>417</sup> Section 3 was strengthened through amendments included in the Housing and Community Development Act of 1992,<sup>418</sup> and further fortified by a 1994 Interim Rule.<sup>419</sup> The stated purpose of Section 3 is “to ensure that the employment and other economic opportunities

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potential federal levers for job creation). Another mechanism that advocates have identified for expanding jobs in low-income communities is the federal CDBG Program, which contains hiring provisions for low-income people in certain circumstances.

Allocated on a formula basis to cities with over 50,000 population, counties (of over 200,000) and states (for rural areas), CDBG funds can be used for various projects that eliminate or prevent slums and blight, or *primarily benefit* low and moderate income residents. CDBG projects can include housing rehabilitation, public services and facilities, infrastructure, business finance and commercial revitalization. When used for economic development, HUD has interpreted the words “*primarily benefit*” to mean that 51% of workers hired or retained must be lower income people.

CENTER FOR COMMUNITY CHANGE, JOBS, *supra* note 257 (emphasis in original). The Coalition for Low Income Community Development (CLICD) has created materials to help practitioners organize poor constituencies to implement responsive CDBG projects. See COALITION FOR LOW INCOME COMMUNITY DEVELOPMENT, CDBG STORIES: AN ORGANIZING MANUAL (1993), available at <http://www.clid.org/org>.

416. See Wendy Pollack & Dina Schlossberg, *Department of Housing and Urban Development and Section 3: Challenges and Opportunities*, 33 CLEARINGHOUSE REV. 50, 50 (1999); see also CENTER FOR COMMUNITY CHANGE, JOBS, *supra* note 257, at 22. See generally BRAD CAFTEL & ARTHUR HAYWOOD, ECONOMIC DEVELOPMENT & LAW CENTER, SECTION 3’S PROMISE: ECONOMIC OPPORTUNITIES FOR LOW-INCOME PEOPLE (1994); Brad Caftel & Arthur Haywood, *Making Section 3 Work: Employment Training and Job Opportunities for Low-Income People*, 27 CLEARINGHOUSE REV. 1336 (1994); Karen Ceraso, *Section 3: A Viable Solution for Job Creation?*, 102 SHELTERFORCE ONLINE, Nov.-Dec. 1998, at <http://nhi.org/online/issues/102/sect3.html>; Bennett L. Hecht, Roger D. Solomon & Stephen Suprenant, *HUD’s Section 3: Creating Economic Opportunities for Low-Income Persons by Making a Thirty Year Old Law Work*, 27 URB. LAW. 39 (1995); G. Kellam Scott, *Business Opportunities Through Contract Preference Under Section 3 of the Housing and Urban Development Act of 1968*, 14 RUTGERS L.J. 741 (1983).

417. Under the 1968 version of Section 3, “HUD did little or nothing to either promote Section 3 or monitor its compliance. Its standards for ensuring compliance were vague and the coverage limited as its regulations applied to only certain HUD sources of funds . . . .” Pollack & Schlossberg, *supra* note 416, at 51.

418. Housing and Community Development of 1992, Pub. L. No. 102-550, §§ 915-916, 106 Stat. 3672, 3878-80. Under the 1992 amendments, Congress clarified the beneficiaries of Section 3 by targeting opportunities to low- and very-low income persons. See Pollack & Schlossberg, *supra* note 416, at 53. In addition, the amendments created an order of preference, designating which low-income persons received priority in Section 3 training and employment opportunities. See *id.* at 54. The amendments also created a parallel set of priorities for allocating contracting opportunities on Section 3 projects. See *id.* at 54-55.

419. HUD adopted an Interim Rule in 1994 that established key provisions, including “safe harbor” hiring and contracting goals, supported by advocates of public housing residents. See Pollack & Schlossberg, *supra* note 416, at 52. An Unpublished Final Rule was drafted in 1998, but has not been officially approved.

generated by Federal financial assistance for housing and community development programs shall, to the greatest extent feasible, be directed toward low- and very low-income persons, particularly those who are recipients of government assistance for housing.<sup>420</sup> Recipients of designated HUD funds,<sup>421</sup> as well as their contractors and subcontractors,<sup>422</sup> may demonstrate compliance with the “greatest extent feasible” requirement by meeting the safe harbor numerical goals set forth in the federal regulations.<sup>423</sup> In particular, recipients of HUD public housing funds can satisfy the safe harbor goals by committing to employ Section 3 residents—defined as public housing residents or low- to very low-income residents of the designated metropolitan area<sup>424</sup>—as thirty percent of new hires each year.<sup>425</sup> In working to achieve compliance, recipients are required to give priority in employment opportunities to residents of the specific housing development projects receiving financial assistance.<sup>426</sup>

In practice, given that most local PHAs rely heavily on HUD funds for housing demolition, rehabilitation, and construction, Section 3 has become the focal point of advocacy to implement comprehensive resident hiring programs. Although HUD has shown little interest in sanctioning PHAs for failing to meet Section 3 goals,<sup>427</sup> collaboration between PHAs and community organizations has resulted in the successful implementation of voluntary Section 3 compliance programs that have created employment opportunities for public

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420. 12 U.S.C. § 1701u(b) (2001); *see also* 24 C.F.R. § 135.1 (2001).

421. Under the regulations, a Section 3 “recipient” is defined as follows:

Any entity which receives section 3 covered assistance, directly from HUD or from another recipient and includes, but is not limited to, any State, unit of local government, PHA [Public Housing Authority], IHA [Indian Housing Authority], Indian tribe, or other public body, public or private nonprofit organization, private agency or institution, mortgagor, developer, limited dividend sponsor, builder, property manager, community housing development organization, resident management corporation, resident council, or cooperative association.

24 C.F.R. § 135.5 (2001). “Section 3 covered assistance” includes both “public and Indian housing assistance” and “housing and community development assistance.” *Id.* § 135.3(a). The regulations specify that Section 3 applies to all recipients receiving public and Indian housing assistance, *see id.* § 135.3(a)(3)(i), but only those recipients receiving over \$200,000 in other housing and community development program assistance, *see id.* § 135.3(a)(3)(ii)(A).

422. Section 3 applies to all contractors and subcontractors on projects receiving public and Indian housing assistance, regardless of the amount of the contract or subcontract. *See id.* § 135.3(a)(3)(i). Section 3 applies to contractors and subcontractors on projects receiving other housing and community development assistance only when the contract or subcontract exceeds \$100,000. *See id.* § 135.3(a)(3)(ii)(B).

423. *See id.* § 135.30.

424. *See id.* § 135.5.

425. *See id.* § 135.30(b)(1)(iii). Recipients of HUD community development and other housing assistance can meet the safe harbor requirements by employing Section 3 residents as 10% of new hires. *See id.* § 135.30(b)(2)(i).

426. *See id.* § 135.34(a).

427. *See* Pollack & Schlossberg, *supra* note 416, at 58 (“HUD to our knowledge has never initiated an action against a recipient for noncompliance.”).

housing residents. For instance, the Housing Authority of the City of Los Angeles (HACLA) has instituted a Resident Pre-Employment, Apprenticeship and Employment Program that requires HACLA contractors to enter into project labor agreements with designated trade unions and hire specific numbers of public housing residents.<sup>428</sup> In another example, tenant advocacy in Johnstown, Pennsylvania resulted in a formal agreement by the Johnstown Housing Authority to incorporate greater resident participation in the formulation and monitoring of resident hiring programs.<sup>429</sup> Other community groups have organized to require major Section 3 contractors to institute stronger resident hiring initiatives. In one example, ACORN pressured Price Waterhouse, which has HUD contracts of almost \$9 million, to enter into a multi-city first source hiring program to fulfill its Section 3 obligations.<sup>430</sup>

Section 3 advocacy relies on innovative coalitions of legal services lawyers, tenant organizing groups, and labor union locals.<sup>431</sup> Many successful Section 3 programs have evolved from the efforts of indigenous tenant groups and community organizations, which have been able to initiate grassroots actions and invoke PHA grievance procedures to leverage stronger commitments to Section 3 hiring.<sup>432</sup> In addition, since many of the jobs created

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428. San Francisco has a similar apprenticeship training program, and a coalition of legal services attorneys, community organizations, and labor locals in New York City is currently advocating for the adoption of such a program. See *N.Y. City Council, Comm. on Hous. & Bldgs. and Comm. on Contracts, J. Hearing on Contracting by the N.Y. City Hous. Auth.* (Apr. 26, 2001) (testimony of Paul K. Sonn, Associate Counsel, Brennan Center for Justice at New York School of Law). It should be noted, however, that although an increasing number of cities are creating apprenticeship training programs, effective implementation remains an issue. For instance, Public Counsel is currently working with a group of tenants in East Los Angeles to ensure ongoing compliance with the Housing Authority of the City of Los Angeles' Resident Pre-Employment, Apprenticeship and Employment Program in a construction project that is replacing what was the largest public housing project in the city.

429. See CENTER FOR COMMUNITY CHANGE, *JOBS*, *supra* note 257, at 22.

430. See ACORN, *JOBS*, at <http://www.acorn.org/25-anniversary/jobs.html> (on file with author).

431. See Pollack & Schlossberg, *supra* note 416, at 59 ("The relationships among recipients, contractors, unions, and Section 3 residents are of particular importance to the success of Section 3.")

432. In describing the role of community-based groups in Section 3 advocacy, Wendy Pollack and Dina Schlossberg note that:

Tenant and community organizations must use their collective political power to force the other players to apply Section 3 aggressively and creatively. For example, a tenant organization at a public housing development that has been awarded a HOPE (Homeownership and Opportunity for People Everywhere) VI grant to revitalize the housing project may include as conditions of the grant the requirement that a certain amount of supportive-service dollars be set aside for job-training or employment-readiness assistance and a commitment that a certain number or percentage of jobs be written into the contract with HUD. In some locales Section 3 organizations negotiate with recipients and contractors on behalf of residents, develop aggressive Section 3 plans, provide a job bank for potential Section 3 opportunities, and act as the local compliance and monitoring organization.



in Section 3 housing development projects are in construction and related building trades, unions have been forceful allies in negotiating with PHAs to create apprenticeship training and hiring programs that channel residents through union-sponsored institutions. CED lawyers play numerous roles in this emerging Section 3 advocacy, primarily working to negotiate, draft, and enforce resident hiring plans.<sup>433</sup> They can also facilitate Section 3 compliance by disseminating information to public housing residents about their Section 3 rights, coordinating exchanges between community-based organizations and labor representatives on Section 3 enforcement strategies, and structuring nonprofit entities to formalize the Section 3 organizing mission of tenant groups. While still in its early stages, Section 3 advocacy is emerging as an important vehicle for targeting grassroots efforts to leverage living wage jobs from federally supported development projects.

### 3. *Sectoral employment interventions.*

CED practitioners have also begun to connect their job creation efforts to a broader program of workforce development to prepare low-income job seekers for viable living wage careers. The tool that has been used to promote workforce development—Sectoral Employment Intervention (SEI)—constitutes a critical element of the new CED advocacy, employing a coalition-based strategy to create systematic changes in the delivery of job training services to the poor. Under the conventional CED paradigm, efforts are made to build an indigenous business base to employ local residents. SEIs depart from this conception, adopting a non-local approach that removes barriers for low-income workers seeking to access living wage employment on a regional level.<sup>434</sup> In particular, SEIs identify high-growth sectors within a regional economy that provide living wage jobs and develop customized job training programs to move low-income job seekers into targeted industries.<sup>435</sup>

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*Id.* at 62.

433. Although much of the legal work involved in Section 3 advocacy—including negotiating and drafting resident hiring programs—can properly be characterized as transactional in nature, poverty lawyers may be called upon to file administrative complaints and engage in other types of litigation activities in the Section 3 context. See Pollack & Schlossberg, *supra* note 416, at 62 (“If there is a lack of compliance, Section 3 residents or their representatives may file a complaint with HUD or seek judicial relief to enforce their rights.”).

434. Greg Volz and Brad Caftel note:

SEI shares the poverty-alleviation goals of traditional CED work, but, instead of working from the inside out and relying on neighborhood resources, SEI aims to capture employment opportunities and resources beyond the neighborhood, where employers are most often located. The goal is to achieve a greater impact by linking residents of poor communities to employment opportunities in the regional or suburban labor market.

Volz & Caftel, *supra* note 415, at 571.

435. See Foster-Bey, *supra* note 255, at 36::

SEIs evolved out of regional sectoral economic development strategies that focused more broadly on facilitating industry-wide growth and enhancing sectoral competitiveness.<sup>436</sup> SEIs build upon these early economic development efforts by analyzing how job increases created by sectoral growth can be directed to benefit low-income communities:<sup>437</sup> “In addition to analyzing an industry’s employment opportunities, employment strategies pay special attention to the *hiring practices* of employers: not only *who* they hired, but *how* they hired and *where* they hired from.”<sup>438</sup> On the basis of these analyses, SEIs structure comprehensive workforce development programs that not only prepare lower-skilled workers for jobs in the targeted sector, but also reform industry-wide hiring practices by helping employers address institutional barriers that block employment for poor workers.<sup>439</sup> Adopting a

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SEIs endeavor to identify and develop access routes to wage-adequate employment within stable or growth industries of a regional economy rather than by strategically investing or reforming key institutions that control access to opportunities in particular sectors . . . . A sectoral intervention would identify the types of training required, the institutions currently providing the training, and present levels of access for low-income workers. The intervention would also target major employers to determine recruiting practices and assess options for increasing their recruitment of disadvantaged workers.

*Id.* (citation omitted). In describing SEI, Volz and Caftel state that:

SEI, which helps clients make the transition from welfare to work at living-wage jobs, is a systemic approach to community economic development (CED) that seeks to connect residents of poor communities to employment opportunities, livable wages and benefits, good working conditions, and advancement opportunities. SEI works toward these goals by redirecting training resources and education and facilitating direct linkages to employers in targeted regional industries.

Volz & Caftel, *supra* note 415, at 569-70; *see also* CENTER FOR COMMUNITY CHANGE, SECTORAL DEVELOPMENT STRATEGIES, at <http://www.communitychange.org/sectoral.htm> (last visited Jan. 7, 2002).

436. *See* BETH SIEGEL & PETER KWASS, JOBS AND THE URBAN POOR: PUBLICLY INITIATED SECTORAL STRATEGIES 5-7 (1995) (discussing the historical evolution of sectoral economic development strategies); CENTER FOR COMMUNITY CHANGE, *supra* note 435 (stating that, on the basis of an analysis of the state or local economy, sectoral efforts identified key economic sectors and tailored programs that promoted intra-sector cooperation; supported new research and development; facilitated financing; structured employment, training, and marketing programs; and addressed barriers to industry competitiveness); *see also* PEGGY CLARK & STEVEN L. DAWSON, CHARLES STUART MOTT FOUNDATION, JOBS AND THE URBAN POOR: PRIVATELY INITIATED SECTORAL STRATEGIES (1995); Gary Anderson, *Industry Clustering for Economic Development*, ECON. DEV. REV., Spring 1994, at 26-32; Timothy Chase, *A Regional Approach to Economic Development: The Illinois Corridors of Opportunity Program*, ECON. DEV. REV., Fall 1992, at 88-90; Ernest Sternberg, *The Sectoral Cluster in Economic Development Policy: Lessons from Rochester and Buffalo*, ECON. DEV. Q. 342-56 (1991).

437. *See* CENTER FOR COMMUNITY CHANGE, *supra* note 435 (“Sectoral employment strategies also begin with a strategic analysis, but the purpose is to identify occupations and industries which have the potential to provide decent jobs to residents of low income neighborhoods.”).

438. *Id.*

439. *See id.* at 5 (stating that SEIs, in addition to placing greater numbers of low-income people into jobs, also effects systemic change by “[c]hanging the hiring standards or

collaborative approach that integrates employers, training providers, and social services agencies,<sup>440</sup> an increasing number of community-based organizations have implemented SEIs that augment job skills for low-income workers, affording expanded access to high-growth, high-wage industry clusters.

The most innovative SEIs have leveraged federal workforce development resources to create model training programs and enhance the training infrastructure in identified industries. In particular, the enactment of the Workforce Investment Act (WIA) of 1998,<sup>441</sup> which replaced the Job Training Partnership Act as the mechanism for dispensing federal job training assistance,<sup>442</sup> has galvanized advocates seeking to improve training opportunities for hard-to-employ workers. WIA mandates that local workforce investment boards (WIBs), which are responsible for setting policy and overseeing programs within the designated workforce area,<sup>443</sup> locate core job training services at a single comprehensive center to streamline service delivery.<sup>444</sup> Although access to WIA's "one-stop" system is open to any individual, regardless of economic background, the statute requires that priority for higher-level training activities be provided "to recipients of public assistance and other low-income individuals."<sup>445</sup> In order to obtain services from eligible providers, job seekers must use a voucher-based system of individual training accounts.<sup>446</sup> WIA requires that the provision of training

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hiring practices of employers").

440. See Volz & Caftel, *supra* note 415, at 571 ("SEI promotes a collaborative partnership among community-based organizations, industry employers, and employment training providers, thus integrating human services, economic development, and work-force development strategies."); see also SIEGEL & KWASS, *supra* note 436, at ix.

441. See 29 U.S.C. §§ 2801-2945 (2001).

442. See Greg Bass, *Adult and Dislocated Worker Job Training Provisions of Title I of the Workforce Investment Act of 1998: Part 1—Federal, State, and Local Work-Force Investment System*, 33 CLEARINGHOUSE REV. 524, 526 (2000).

443. See 29 U.S.C. § 2832(a), (d) (2001).

444. See *id.* § 2864(c)(2).

445. *Id.* § 2864(d)(4)(E). Technically, the statute only provides that priority be given to low-income individuals in areas where funds for training services are limited. *Id.* The Department of Labor, however, has determined that "funding is generally limited." 20 C.F.R. § 663.600(b) (2001). Under WIA's adult training program, workforce development services are broken down into three tiers: core services, see 29 U.S.C. § 2864(d)(2) (2001); intensive services, see *id.* § 2864(d)(3); and training services, see *id.* § 2864(d)(4). In order to access intensive and training services, a job seeker must either be unemployed or employed at a level below self-sufficiency. See *id.* § 2864(d)(3)(A)(i)-(ii), (d)(4)(A)(i).

446. See 29 U.S.C. § 2864(d)(4)(F) (2001) (discussing eligible training providers); *id.* § 2864(d)(4)(G)(i) (discussing Individual Training Accounts (ITAs)). Training services may be provided pursuant to contracts, instead of ITAs, where "the local board determines that there is a training services program of demonstrated effectiveness offered in the local area by a community-based organization or another private organization to serve special participant populations that face multiple barriers to employment." *Id.* § 2864(d)(4)(G)(ii)(III).

services be directly linked to local “demand” occupations.<sup>447</sup>

Community organizations implementing SEIs have sought to draw upon WIA resources to create programs that move marginalized workers into high-paying demand occupations. For example, the Los Angeles Metropolitan Alliance (Metro Alliance)—a coalition of organizing groups, labor unions, faith-based entities, and legal services advocates—has initiated an SEI campaign targeting the Los Angeles WIB as a funding source for a training program designed to open the health care industry to low-income job seekers. After conducting an in-depth regional economic analysis that pointed to health care as a growing high-wage industry in Los Angeles, the Metro Alliance convened a steering committee of community representatives to chart an organizing and policy advocacy agenda for implementing a health care SEI.

As a first step toward establishing the program, the committee drew public attention to the need for increased access to health care jobs by holding a large community rally and staging a series of public demonstrations at WIB hearings. This initial organizing, in combination with private negotiations, was successful in convincing the local WIB to identify health care as a demand occupation in its annual budget and designate funds for industry-specific job training. The steering committee subsequently drafted a Healthcare Careers Training and Placement Program Proposal outlining its vision of community-based job training, which was circulated among WIB members and city staff. Steering committee members are currently engaged in ongoing discussions about the details of the health care proposal and have received an initial commitment from the WIB to fund a pilot training program.<sup>448</sup>

CED lawyers are critical SEI actors, building organizational capacity for groups employing SEI techniques,<sup>449</sup> and brokering the type of collaborative

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447. *See id.* § 2864(d)(4)(G)(iii):

Training services provided under this paragraph shall be directly linked to occupations that are in demand in the local area, or in another area to which an adult or dislocated worker receiving such services is willing to locate, except that a local board may approve training services for occupations determined by the local board to be in sectors of the economy that have a high potential for sustained demand or growth in the local area.

*Id.*

448. In another example of SEI advocacy, the Delaware County Legal Assistance Association in Chester, Pennsylvania, worked with several community-based organizations to initiate an SEI program tied to WIA implementation. *See Volz & Cafel, supra* note 415, at 577-78.

449. Volz and Cafel note:

A legal services provider can identify community-based organizations interested in workforce and community economic development and offer organizational capacity-building assistance as appropriate. Such assistance may include the following: board and staff training, especially in roles and responsibilities and in the group decision-making process; information on funding opportunities, available technical assistance, and other resources; descriptions of projects being done elsewhere and different strategy and program alternatives as an aid in project planning; and project implementation assistance, including negotiation and preparation of contracts and agreements.

relationships necessary to promote effective SEI projects.<sup>450</sup> CED practitioners can also play a meaningful part in drafting contracts establishing SEI partnerships and advising community organizations on how to integrate SEI programs into the WIA system. By redirecting federal resources to poor constituencies and linking low-income workers to living wage employment opportunities, SEIs constitute a crucial component of the economic justice agenda.

#### CONCLUSION

The 1990s will be remembered as a decade of fractious partisan politics, symbolized by the presidential impeachment in Washington and polarizing state initiatives. Yet a less remarked upon—but no less significant—political development also occurred, one that has left progressive lawyers and other activists struggling to redefine their role as social change agents. In particular, a surprising political consensus formed around the idea that the market could be harnessed to alleviate poverty. As this consensus held sway, politicians and professionals of different ideological stripes embraced the notion that poor neighborhoods were underutilized markets in need of concentrated private sector investment in order to stimulate revitalization. Market-based CED as a vehicle for local economic empowerment emerged as the ideal form of antipoverty advocacy for the 1990s, one that did not challenge the fundamental tenets of a system that was fueling unprecedented stock market gains and creating a record number of paper-billionaires. This model of CED accepted wealth creation as a bedrock principle and suggested that the tools used by the rich to bolster their portfolios should also be applied to redressing the problems of the poor.

To be sure, the market-based CED paradigm had its successes, creating new units of affordable housing, building commercial shopping centers in neighborhoods long deprived of basic services, supporting community-based businesses owners, and directing public and private resources to distressed areas. As the decade brought economic issues to the fore and legal services lawyers faced ever-tightening restrictions, increasing numbers of poverty lawyers adopted the market-based CED approach, working with community organizations to strengthen the fraying infrastructure of neighborhoods passed over by the economic boom. Transactional lawyers—those with expertise in real estate, tax, and corporate law—became influential community-based advocates, advising nonprofit developers on structuring tax credit housing deals, negotiating with banks on financing for

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*Id.* at 572.

<sup>450</sup> *See id.* at 572 (“Through contacts and relationships, a legal services provider can help community-based organizations gain access to both the larger business and employment training community and to supportive institutions in the larger community such as universities, law schools, and law firms.”).

commercial projects, and assisting low-income entrepreneurs to fulfill their dreams of business ownership.

The market consensus, however, was always an unstable one. The product of a volatile mix of black power ideology, supply-side economics, and empowerment theory, market-based CED maintained its strong appeal so long as the economic upswing continued to create media-friendly examples of urban renaissance. As the 1990s waned, evidence of market failure disrupted the tenuous bonds of this consensus. Against the garish glow of dot-com consumption, at the height of the New Economy boom, poverty persisted—growing more extreme in many urban areas—while income inequality grew more pronounced. Despite the well-publicized success of the wealthy few, the portrait of fin-de-siècle America that emerged was one of intransigent class divisions, a growing low-wage workforce, and deep economic cleavages along racial lines. For all its fanfare, the doctrine of business development that was the hallmark of market-based CED had not significantly altered the geography of urban poverty. Moreover, the market version of CED generated a political passivity among progressive advocates for low-income constituencies. As CED practitioners promoted market expansion, they largely disregarded the type of political mobilization that had proven effective in shifting resources to historically marginalized groups. Thus, the confrontational styles of NWRO and ACORN were replaced with the politically accommodationist tactics of CDCs. The place-based, business development logic of economic nationalism trumped the mass-based, worker-centered imperative of economic justice.

This Article has described the emergence of a new approach to CED, one that draws upon the energy of grassroots organizing and leverages the political clout of labor and other established community organizations to re-ignite the movement for economic justice. Unlike the market-based model, which relies primarily on private sector interventions to promote economic development, this approach integrates legal advocacy and grassroots activism to build progressive political power and redistribute economic resources to low-income communities. In particular, lawyers have begun to use existing legal levers and organizational structures to expand the scope of living wage ordinances, develop sites of democratic economic alternatives, exact community benefits in exchange for redevelopment subsidies, and create jobs and responsive training programs for low-income workers. These efforts require that lawyers use their technical skills in representing community-based organizations engaged in organizing and other political activity, while also becoming active participants in grassroots campaigns to effect social change. By linking their legal advocacy to a larger progressive movement, innovative CED practitioners are changing the parameters of antipoverty policy and shaping the contours of a broad-based, multiracial coalition for economic justice.

As the country enters a period of economic uncertainty and revitalized political conservatism, the limitations of market-based CED will be magnified. In addition,

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as our urban areas continue to evolve into racially hyper-diverse, immigrant-dominated centers with more spatially dispersed poverty, the traditional concepts of place-based CED—evolving out of efforts to address concentrated African American poverty—will become increasingly outdated. While neighborhood-level economic interventions will continue to be important in urban areas driven by residential segregation, it will be more critical still to forge cross-neighborhood coalitions of low-income people to demand equitable urban development schemes. Thus, as this Article has argued, an advocacy strategy that continues to promote market expansion without simultaneously attempting to activate a progressive resurgence will remain politically peripheral. To address poverty in a comprehensive manner, CED advocates must deploy a more tactically integrated approach, using sophisticated market techniques in a way that privileges political activism and advances the goals of a broader economic justice agenda.